UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

SPRINT COMMUNICATIONS COMPANY L.P.,

Plaintiff,

v.

NEBRASKA PUBLIC SERVICE etc.; et al.,

Defendants.

No.: 4:05 CV 03260-TDT

STIPULATED RECORD ON APPEAL

VOLUME IV

4:05cv3260-A45D

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

SPRINT COMMUNICATIONS COMPANY L.P., Plaintiff, v. NEBRASKA PUBLIC SERVICE, etc.; et al., Defendants.	No: 4:05 CV 03260 **STIPULATION DESIGNATING RECORD ON APPEAL**

Plaintiff and Defendants, by and through their respective counsel, hereby stipulate and agree that the Record on Appeal in this proceeding shall contain the following documents:

Tab No.	Date Filed	Document Filed	Bates Range
1	5/23/05	Petition for Arbitration of Sprint Communications Company L.P., C-3429	0001 – 0034
2	5/26/05	NPSC's Letter of Notification to Sprint (acknowledging receipt of Petition for Arbitration, setting due dates, etc.), C-3429	0035
3	5/31/05	[SENTCO's] Motion for Commission to Act as Arbitrator, C-3429	0036 – 0038
4	6/1/05	Order Setting Oral Argument (Opinion and Findings; Order), C-3429	0039 - 0040
5	6/6/05	Sprint's Response to SENTCO's Motion for Commission to Act as Arbitrator, C-3429	0041 – 0043
6	6/14/05	Motion Granted (Opinion and Findings; Order), C-3429; 6/15/05 Certification of Order	0044 – 0046
7	6/15/05	Order Setting Prehearing Conference, C-3429; Certification of Order	0047 – 0048
8	6/17/05	Motion to Dismiss or, in the Alternative, Response of Southeast Nebraska Telephone Company to Petition for Arbitration, C-3429	0049 – 0098
9	7/12/05	Protective Order, C-3429; 7/15/05 Amended Certification of Order	0099 – 0109
10	7/25/05	Southeast Nebraska Telephone Company's Exhibit Designations, C-3429	0110 – 0112

Tab No.	Date Filed	Document Filed	Bates Range
11	7/27/05	Direct Testimony of James R. Burt, C-3429	0113 – 0149
12	7/29/05	Sprint Communications Company L.P.'s Motion in Limine and Request to Exclude Discovery and Documents Identified by Southeast Nebraska Telephone Company, C-3429	0150 - 0179
13	8/3/05	Pre-Filed Rebuttal Testimony of Steven E. Watkins, C-3429	0180 – 0226
14	8/5/05	Response of Southeast Nebraska Telephone Company to Sprint Communications Company L.P. Motion in Limine	0227 – 0243
15	8/5/05	Rebuttal Testimony of James R. Burt, C-3429	0244 – 0251
16	8/5/05	Hearing Officer Order (Opinion and Findings; Order), C-3429; 8/8/05 Certification of Order	0252 – 0254
17	8/9/05	Hearing Officer Order (Opinion and Findings; Order), C-3429; Certification of Order	0255 – 0256
18	8/9/05	Response of Southeast Nebraska Telephone Company to Sprint Communication L.P. Motion to Strike, C-3429	0257 – 0265
19	8/10/05	Sprint Communications Company L.P.'s Motion to Strike Rebuttal Testimony of Steven E. Watkins and Exhibits Thereto, C-3429	0266 – 0275
20	8/16/05	Transcript of Proceedings before the Nebraska Public Service Commission on 8/10/05, C-3429	0276 - 0432
21	8/16/05	Certification of Court Reporter (listing Exhibits made part of Transcript of Proceedings before the Nebraska Public Service Commission on 8/10/05, C-3429)	0433
22	8/16/05	8/10/05 Hearing Exhibit PSC 1 (*The Daily Record*, 5/27/05, p.8: New Public Notices NPSC, including C-3429)	0434
23	8/16/05	8/10/05 Hearing Exhibit PSC 2 (6/29/05 Certification of 6/28/05 Order, C-3429, with attached Order)	0435 – 0439
24	8/16/05	8/10/05 Hearing Exhibit Sprint 102 (7/25/05, Direct Testimony of James R. Burt, C-3429)	0440 – 0471
25	8/16/05	8/10/05 Hearing Exhibit Sprint 103 (8/3/05, Rebuttal Testimony of James R. Burt, C-3429)	0472 – 0479
26	8/16/05	8/10/05 Hearing Exhibit Sprint 104 (6/28/05, Planning Conference Order: Opinion and Findings; Order, C-3429)	0480 – 0483
27	8/16/05	8/10/05 Hearing Exhibit Sprint 105 (8/5/05, Hearing Officer Order: Opinion and Findings; Order, C-3429)	0484 – 0485

Tab No.	Date Filed	Document Filed	Bates Range
28	8/16/05	8/10/05 Hearing Exhibit Sprint 106 (not dated, Current Network Configuration Serving Subscribers in Lincoln, NE, Exhibit JRB-1)	0486 – 0487
29	8/16/05	8/10/05 Hearing Exhibit Sprint 107 (not dated, Network Configuration Envisioned to Serve Subscribers in Falls City, NE Compared to Existing Network in Lincoln, NE, Exhibit JRB-2)	0488
30	8/16/05	8/10/05 Hearing Exhibit Sprint 108 (Affidavit of Jeffrey Woosley)	0489
31	8/16/05	8/10/05 Hearing Exhibit SENTCO 1 (5/20/05, Petition for Arbitration of Sprint Communications Company L.P.; Exhibit 1: 12/22/04 letter from Paul M. Schudel, Woods & Aitken LLP, to Monica M. Barone, Esq. [Sprint, discussing steps to address before negotiation of an interconnection agreement]; Exhibit 2: [proposed] Interconnection and Reciprocal Compensation Agreement Between Southeast Nebraska Telephone Company and Sprint Communications, L.P.)	0490 – 0523
32	8/16/05	8/10/05 Hearing Exhibit SENTCO 2 (6/17/05, Motion to Dismiss Or, in the Alternative, Response of Southeast Nebraska Telephone Company to Petition for Arbitration, C-3429)	0524 – 0573
33	8/16/05	8/10/05 Hearing Exhibit SENTCO 3 (7/25/04, Pre-Filed Direct Testimony of Elizabeth A. Sickel with attached 7/25/04 Southeast Nebraska Telephone Company's Exhibit Designations, C-3429)	0574 – 0588
34	8/16/05	8/10/05 Hearing Exhibit SENTCO 4 (1/12/05 letter from Paul M. Schudel, Woods & Aiken LLP, to Monica M. Barone, Esq. [Sprint, detailing SENTCO's unanswered questions, attaching email and U.S. mail correspondence between Sprint and SENTCO, a copy of his 12/15/04 letter to the Commission re: C-3228, and suggesting a meeting between Sprint and SENTCO facilitated by representatives of the Commission and/or its Staff to discuss the nature of the interconnection arrangement Sprint seeks from SENTCO])	0589 – 0604
35	8/16/05	8/10/05 Hearing Exhibit SENTCO 5 (7/16/04, [Sprint's] Amended Application, Application No. 3204)	0605 – 0613
36	8/16/05	8/10/05 Hearing Exhibit SENTCO 6 (9/21/04, Sprint's Responses to Inte[r]venors' Data Requests, C-3204)	0614 – 0621

Tab No.	Date Filed	Document Filed	Bates Range
37	8/16/05	8/10/05 Hearing Exhibit SENTCO 8 (10/1/04, Testimony of James R. Burt on Behalf of Sprint, C-3204)	0622 – 0632
38	8/16/05	8/10/05 Hearing Exhibit SENTCO 10 (11/4/04, Transcript of Proceedings, C-3204, not verified by Reporter)	0633 – 0790
39	8/16/05	8/10/05 Hearing Exhibit SENTCO 12 (6/17/04, Application and Request for Authority *In the Matter of the Application of Time Warner Cable Information Services (Nebraska), LLC d/b/a Time Warner Cable for a Certificate of Authority to Provide Local and Interexchange Voice Services within the State of Nebraska*	0791 – 0834
40	8/16/05	8/10/05 Hearing Exhibit SENTCO 13	0835 – 0850
41	8/16/05	8/10/05 Hearing Exhibit SENTCO 14	0851 – 0862
42	8/16/05	8/10/05 Hearing Exhibit SENTCO 16 (9/17/04, Transcript of Proceedings re: Application No. C-3228, not verified by Reporter)	0863 – 0967
43	8/16/05	8/10/05 Hearing Exhibit SENTCO 18 (8/16/99-3/8/02, Tariff Schedule Applicable to Local Exchange Services Within the State of Nebraska Issued by Sprint Communications Company L.P., Nebraska Public Service Commission Local Exchange Tariff No. 1)	0968 – 1079
44	8/16/05	8/10/05 Hearing Exhibit SENTCO 19 (6/15/05, Time Warner Cable Information Services (Nebraska), LLC d/b/a Time Warner Cable, Nebraska Rules and Regulations and Schedule of Charges Applicable to Local and Interexchange Services, Nebraska P.S.C. Tariff No. 1)	1080 – 1126
45	8/16/05	8/10/05 Hearing Exhibit SENTCO 21 (7/29/05 letter from Brad A. Gasper, Sprint, to NPSC with attached 8/1/05 Sprint Communications Company, L.P. Nebraska Tariff P.S.C. No. 2 [introducing intrastate access service offered by Sprint's Competitive Local Exchange Carrier (CLEC)]).	1127 – 1243
46	8/16/05	8/10/05 Hearing Exhibit SENTCO 22 (8/3/05, Pre-Filed Rebuttal Testimony of Steven E. Watkins, C-3429)	1244 – 1290

Tab No.	Date Filed	Document Filed	Bates Range
47	8/16/05	8/10/05 Hearing Exhibit SENTCO 23 (8/9/05, notarized Certificate of NPSC Accountant John Burvainis [re: Sprint's Nebraska Tariff P.S.C. No. 1, that Sprint has no other tariff currently on file with the Commission; re: Time Warner Cable's Nebraska P.S.C. Tariff No. 1; that Time Warner has no other tariff currently on file with the Commission], C-3429)	1291 - 1292
48	8/16/05	8/10/05 Hearing Exhibit SENTCO 24 (8/9/05, notarized Certificate of NPSC Administrative Assistant Anne Bogus [attesting to accuracy and completeness of certain records and files relating to C-3204])	1293 – 1294
49	8/16/05	8/10/05 Hearing Exhibit SENTCO 25 (8/9/05, notarized Certificate of NPSC Administrative Assistant Anne Bogus [attesting to accuracy and completeness of certain records and files relating to C-3204])	1295 – 1296
50	8/17/05	Hearing Officer Order (Opinion and Findings; Order), C-3429; Certification of Order	1297 – 1299
51	9/2/05	Post-Hearing Brief of Southeast Nebraska Telephone Company, C-3429	1300 – 1320
52	9/2/05	[Southeast Nebraska Telephone Company's] Proposed Order-Interconnection Agreement Approved as Modified) , C-3429	1321 – 1341
53	9/9/05	Post-Hearing Brief of Sprint Communications Company L.P. , C-3429	1342 – 1434
54	9/9/05	Sprint Communications Company L.P.'s Proposed Order, C-3429	1435 – 1444
55	9/13/05	Findings and Conclusions; Order, C-3429; Certification of Order	1445 – 1460
56	10/11/05	Letter to NPSC with attached fully executed Interconnection and Reciprocal Compensation Agreement Between Southeast Nebraska Telephone Company and Sprint Communications L.P., C-3429	1461 – 1481
57	10/25/05	Notice of C-3429 application and public meeting 11/1/05	1482
58	11/2/05	Post-Decision Statement of Sprint Communications Company L.P. Concerning Interconnection Agreement To Be Approved Pursuant to Commission's September 13, 2005 Order, C-3429	1483 – 1486
59	11/2/05	Statement of Southeast Nebraska Telephone Company Concerning Interconnection Agreement To Be Approved Pursuant to Commission's September 13, 2005 Order	1487 – 1489
60	11/22/05	Opinion and Findings; Order; Certification of Order	1490 - 1492

Volume IV

The Record on Appeal shall also include a separate volume titled "Stipulated Confidential Record on Appeal" containing the following two documents:

Tab No.	Date Filed	Document Filed	Bates Range
1	8/16/05	8/10/05 Hearing Exhibit SENTCO 20 (7/18/05, Sprint Communications Company L.P.'s Responses to Southeast Nebraska Telephone Company's First Set of Interrogatories, Requests to Produce Documents and Requests for Admissions with attached unsealed envelope marked "[Confidential Attachments to Sprint Communications Company L.P. Responses to Data Requests]" containing two Wholesale Voice Services Agreements, and attached 10/8/04 Interconnection Agreement Between ALLTEL Nebraska, Inc. & Sprint Communications Company L.P., C-3429)	0001 Confidential – 0531 Confidential
2	8/16/05	8/10/05 Hearing Exhibit SENTCO 7 [Submitted in an envelope marked "Confidential"]	0532 Confidential – 0533 Confidential

Although plaintiff Sprint is e-filing this stipulation, due to the size of the stipulated record, the stipulated record need not be e-filed and instead Sprint has made arrangements to have a copy of the stipulated record and a copy of this stipulation delivered to the Clerk of the Court.

Dated: January 17, 2005

SPRINT COMMUNICATIONS COMPANY L.P.

By: s/

Raymond A. Cardozo, CA #173263
REED SMITH LLP
Two Embarcadero Center, Suite 2000
San Francisco, CA 94111
Tel:(415) 543-8700
Fax:(415) 391-8269
E-mail: rcardozo@reedsmith.com

Its Attorney

Dated: January 17, 2005

NEBRASKA PUBLIC SERVICE COMMISSION, FRANK E. LANDIS, JR., ANNE C. BOYLE, LOWELL JOHNSON, ROD JOHNSON AND GERALD L. VAP, Commission Defendants

By: s/

L. Jay Bartel, #17247
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509-8920
Tel: (402) 471-2682
E-mail: jay.bartel@ago.ne.gov

Their Attorney

Dated: January 17, 2005

SOUTHEAST NEBRASKA TELEPHONE COMPANY, Defendant/Intervenor

By: s/

Paul M. Schudel, #13723
James A. Overcash, #18627
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, NE 68508
Tel: (402) 43607599
E-mail: pschudel@woodsaitken.com
E-mail: jovercash@woodsaitken.com

Its Attorneys

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN RE:	)	
	)	
SPRINT COMMUNICATIONS	)	
COMPANY L.P. PETITION FOR	)	**APPLICATION NO. C-3429**
ARBITRATION UNDER THE	)	
TELECOMMUNICATIONS ACT	)	

POST-HEARING BRIEF OF SOUTHEAST NEBRASKA TELEPHONE COMPANY

Southeast Nebraska Telephone Company ("SENTCO"), by counsel, and pursuant to the Planning Conference Order issued by the Nebraska Public Service Commission ("Commission") on June 28, 2005 in the above-captioned proceeding, hereby files this Post-Hearing Brief in support of its Proposed Order filed simultaneously herewith. SENTCO makes this filing to identify those governing points of law that confirm that the proffered "third party" language included in the definition of "end user" within the proposed Interconnection and Reciprocal Compensation Agreement (the "Proposed ICA") submitted by Sprint Communications Company L.P. ("Sprint") is inconsistent with: (1) the Communications Act of 1934, as amended (the "Act"); (2) applicable Federal Communications Commission ("FCC") decisions and rules; and (3) otherwise binding Commission precedents. Accordingly, SENTCO respectfully requests that the Commission reject outright any efforts by Sprint to eliminate SENTCO's legal right to negotiate with the entity with which SENTCO will compete for end user customers.[1]

[1] SENTCO has filed a Motion to Dismiss the pending petition for arbitration filed by Sprint (the "Petition") as part of the SENTCO response to that petition. *See* Planning Conference Order at 1. With respect to this aspect of the SENTCO filing, the Commission noted that "it will address the Motion to Dismiss and any opposition thereto as part of its decision in this matter." *Id.* The Commission also made clear that SENTCO and Sprint would not be harmed by this decision as it "does not prevent either of them from raising additional arguments or assertions that arise out of the presentation of evidence or the record from the hearing on Sprint's Petition." *Id.* Accordingly, this Post-Hearing Brief and SENTCO's proposed order are filed without waiver of the position taken by SENTCO that the Petition should be dismissed in its entirety. Not surprisingly, the record developed in this proceeding simply confirms that conclusion.

I. Summary

While Sprint has advanced two issues and has formulated such issues on the basis of the relevant provisions of the Proposed ICA, the issue in this proceeding is straightforward and can be expressed as follows:

> Whether Sprint may nullify SENTCO's rights under the Act to engage in bilateral negotiations with the entity that intends to compete with SENTCO for end users through Sprint's efforts to expand the definition of "end user" within the Proposed ICA to include third parties?

Sprint's proposal is neither legally nor factually sound. Not only are Sprint's efforts to nullify SENTCO's right to bilateral negotiations contrary to the Act, but Sprint's proposal is directly at odds with the FCC's implementing rules and decisions *as well as* the Commission's decision with respect to the third party disclosed by Sprint for whose benefit Sprint is attempting to utilize the Proposed ICA – Time Warner Cable ("TWC" or "Time Warner').

There is no sustainable basis in the record to find that Sprint is a "telecommunications carrier" (47 U.S.C. §153(44)) when it fulfills its private contract obligations to TWC. Moreover, even if such finding of fact could be made, Sprint's effort to assert Section 251(b)(5) rights under the Act in its private contract role to TWC (or any other third party) is wholly without merit. The facts demonstrate that Sprint does not operate the end office switch or its functional equivalent from which the ultimate end user receiving a call from SENTCO is served, and the law makes clear that it is *only* the entity operating that end office switch or its functional equivalent that can assert reciprocal compensation rights under Section 251(b)(5).

Notwithstanding these infirmities, however, SENTCO respectfully submits that the Commission need not confine its decision to the application of the Act's structure or FCC rules. Rather, Sprint is attempting an improper end run of the Commission's November 23, 2004, decision in Application No. C-3228 (the "*C-3228 Order*"). In the *C-3228 Order*, the

Commission *explicitly* directed Time Warner to seek interconnection from SENTCO. Sprint's language in the Proposed ICA ignores this decision, a result that simply cannot stand.

Based on its actions immediately before the hearing and which the Hearing Officer admonished the parties to avoid, Sprint may use highly-charged (albeit inaccurate and improper) rhetoric regarding SENTCO's positions in an effort to confuse the facts and issues required to be addressed in this proceeding. SENTCO respectfully requests, however, that the Commission reject outright any effort by Sprint to obfuscate the facts and issues in this proceeding.

To avoid any doubt, there is no "anti-competitive" issue raised in this proceeding. Where Sprint seeks to compete with SENTCO for retail end users physically located within the SENTCO service area, the terms and conditions for that competition and the associated reciprocal compensation arrangements have been addressed and agreed to by the parties. *See* Exhibit 3, Pre-Filed Testimony of Elizabeth A. Sickel, Application No. C-3429 ("Sickel Testimony") at 4 (line 24) to 5 (line 5). Moreover, the private contract services that Sprint intends to provide to third parties are services that SENTCO does not provide. *See id.* at 6 (line 3) to 8 (line 3). Consequently, competition between Sprint and SENTCO is not an issue.

The record is also equally clear that, absent Time Warner coming to the table to discuss its plans to offer telecommunications services within the SENTCO service area, there is no rational way for SENTCO to ensure that it will be able to address and negotiate with Time Warner the full array of business and interconnection issues that SENTCO has the legal right to address within an interconnection agreement. *See id.* at 5 (lines 20-27). This is, in effect, the very policy and rationale upon which the Commission ruled in the *C-3228 Order* – that TWC must seek negotiation directly with SENTCO.

Sprint also may contend that the Commission must allow Sprint to utilize the Proposed ICA for the benefit of TWC because, absent such action, there would be a delay in bringing competition to the SENTCO service area. *See,* Tr. 60:13-18. That position, however, disregards the factual realities presented to the Commission.

The fact is that the approach taken by Sprint and TWC in this case ignores the Commission's directives in its *C-3228 Order,* and the consequence thereof is a course of their own respective choosing. Regardless, the irony is that if TWC had sought interconnection from SENTCO as it was required to pursuant to the *C-3228 Order*, the time period for any required arbitration and decision would have already passed – the 270 days reference by Sprint's counsel for completion of negotiation and arbitration of an interconnection agreement. *See* Tr. 130:25-131:4; see also 47 U.S.C. §252(b)(4)(C). No delay would have resulted but for the conscious choice by Sprint and TWC to ignore the procedures established by the Commission in the *C-3228 Order.*

This case is also not about SENTCO thwarting the efforts of TWC to obtain private contract services from Sprint. SENTCO understands that private contracts are generally necessary for a telecommunications carrier such as TWC to obtain the functions and services it believes can be provided more economically by other entities. *See* Tr. 107:7-12; Sickel Testimony at 8 (lines 15-27). Rather, it is Sprint and TWC that are attempting to end run the structure of the Act and the Commission's directives in the *C-3228 Order.*

Further, Sprint may contend that the Commission should rely heavily on the decisions of other jurisdictions for guidance to resolve the issues regarding the type of private contract relationship that Sprint has stated it has with Time Warner. SENTCO is fully aware that other state commissions in Illinois, Iowa, New York and Ohio have addressed, in some fashion,

arrangements between Sprint and TWC and other certificated carriers and cable companies. However, it does not appear that any of those decisions involved the fact-finding engaged in by the Commission in this proceeding, and certainly those decisions do not involve the directives made by this Commission in the *C-3228 Order*. In any event, SENTCO respectfully submits that it is the Commission's right, as well as its statutory duty to assess independently the facts presented to it. When this is accomplished, and the applicable law is applied, the Commission will agree with SENTCO that Sprint's effort to vitiate SENTCO's Section 252 and Section 251(b)(5) rights should be rejected.

Accordingly, SENTCO respectfully requests that the Commission reject Sprint's position on the issues that are the subject of this arbitration. Such action is consistent with applicable decisions of the Commission as well as applicable law and rational public policy.[2]

II. THE COMMISSION'S ORDER IN APPLICATION NO. C-3228 IS AN ABSOLUTE BAR TO SPRINT'S PROPOSED RESOLUTION OF THE ISSUES IN THIS ARBITRATION

There is no question that the "third party" that Sprint is seeking to include in the Proposed ICA with SENTCO is Time Warner. "Sprint seeks interconnection with SENTCO in order to provide interconnection services to Time Warner Cable which will allow facilities-based local voice competition to be offered in competition with SENTCO." Tr. 27:4-8; *see also* Exhibit 102, Direct Testimony of James R. Burt, Application No. C-3429 ("Burt Testimony") at 3 (lines 63-67), 6 (lines 131-133), 7 (lines 146-159) and 8 (lines 178-181). The Commission,

[2] Within its proposed order SENTCO seeks reconsideration of the Hearing Officer's decision to deny the admissibility of its Exhibit 7 which consisted of one (1) page of the discovery responses made by Sprint in its certification proceeding, Application No. C-3204. SENTCO continues to believe that application of the requirements found in *Neb. Rev. Stat.* §§84-914(1), 27-607 and 27-613 clearly establish the exhibit's admissibility, and that the purported confidentiality agreement issue amounts to nothing more than a "smoke screen." Sprint merely seeks to avoid answering why it has changed its story in this proceeding regarding the network functions and elements that TWC will provide. Moreover, since Sprint witness Burt provided a *post hoc* rationalization on the stand to explain his revision of the explanation in Exhibit 7 that he verified to be true and correct (*see* Tr. 50:5-51:1), Sprint "opened-the-door" to the admission of Exhibit 7 in this proceeding.

however, has already enunciated the process by which TWC must seek interconnection with SENTCO.

> Accordingly, *prior to the offering of service in competition with Southeast Nebraska Telephone Company* . . . under this certificate, the Applicant [Time Warner] must:
>
> 1. File written notice with the Commission when a bona fide request has been sent either by it or its underlying carrier to a rural ILEC.[3]
>
> 2. The rural ILEC then will have 30 days in which to notify the Commission that it intends to raise the rural exemption as a reason not to negotiate or arbitrate an agreement.
>
> 3. The Commission will rule on the rural exemption in accordance with the Telecommunications Act of 1996 (Act).
>
> 4. *The parties will either negotiate or arbitrate an agreement.* The parties will file the agreement for approval. The Commission will then approve or reject the agreement in accordance with the Act.

C-3228 Order at 5-6 (emphasis added).

The Commission could not have been clearer that: (1) it anticipated that Time Warner would seek interconnection with SENTCO; (2) SENCTO could assert its rights under Section 251(f) of the Act *vis-à-vis* the request made by TWC; and (3) SENTCO and Time Warner would be the real parties in interest in any proceeding required to approve or arbitrate any issue left unresolved with respect to the TWC request for interconnection. This process governs the

---

[3] The Commission clarified this requirement in the second ordering paragraph of the *C-3228 Order* providing: "It is further ordered . . . that *the Applicant [Time Warner] submit any bona fide request(s) for interconnection, services or network elements from a rural telephone company to the Commission for its approval prior to the provision of any service under the certification in a rural telephone company area.*" *C-3228 Order* at 10 (emphasis added) The record is clear that Time Warner did not request interconnection of SENTCO. *See* Sickel Testimony at 5 (lines 17-21); Tr. 124:2-5. Moreover, any potential claim by Sprint that it, as Time Warner's purported "underlying carrier," possessed authority to submit a *bona fide* request to SENTCO on Time Warner's behalf would be contrary to the testimony of Sprint witness, Burt, that neither Time Warner nor Sprint are agents of the other. *See,* Burt Testimony at 7 (lines 162-168).

establishment of an interconnection arrangement for the exchange of traffic between end users of Time Warner and SENTCO as the time for reconsideration or appeal of the *C-3228 Order* has passed. *See, Neb. Rev. Stat. § 75-136 (Reissue 2003).* To be sure, the process that the Commission anticipated occurring between TWC and SENTCO has not, in fact, occurred. *See* Sickel Testimony at 5 (lines 17-21); Tr. 124:2-5.

Regardless of any protestations by Sprint to the contrary, the Commission should not permit Sprint to end-run the directives of the *C-3228 Order*. Nor should the Commission permit TWC, who has privity of contract with Sprint pursuant to the private contract it has with Sprint (*see, e.g.,* Burt Testimony at 7 (lines 146-148) and Confidential Attachment to Ex. 20), to ignore the Commission's directive to TWC if TWC wants to compete with SENTCO – seek interconnection with SENTCO and stand ready, willing and able to negotiate and/or arbitrate an interconnection agreement with SENTCO. Both the integrity of and proper reliance upon the Commission's decisional process would be significantly and irreparably harmed if Sprint and TWC were able to "thumb their noses" at the Commission's *C-3228 Order* directives.[4]

Accordingly, SENTCO respectfully submits that the Commission should reject the Sprint's contention that it should be able to include "third parties" in general, and TWC in particular, within the coverage of the Proposed ICA. Absent such decision, Sprint would be permitted to nullify SENTCO's rights to negotiate with TWC, rights that have been clearly and unambiguously provided to SENTCO by the Commission in its *C-3228 Order*.

III. SPRINT MUST BE A TELECOMMUNICATIONS CARRIER TO ASSERT SECTION 251 RIGHTS, WHICH IT IS NOT WHEN IT FULFILLS ITS PRIVATE CONTRACT OBLIGATIONS TO TWC

[4] The record is clear that there is no issue regarding the Commission's jurisdiction over TWC. Sprint unequivocally stated that the service that will be provided is Plain Old Telephone Service. *See,* Tr.56:3-16; Burt Testimony at 17 (lines 394-397), and any issue regarding the Commission's jurisdiction over Voice Over Internet Protocol service providers is irrelevant.

A necessary pre-condition for an entity to assert rights under §§ 251 (a) or (b) of the Act is that it must be a "telecommunications carrier." *Compare* 47 U.S.C. §§ 153(44), 251(a), and 252(a)(1). Section 153(44) defines "telecommunications carrier" as "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in Section 226)." Section 153(46), in turn, defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

Relevant FCC and judicial precedents have interpreted the definition of "telecommunications carrier" to include only those entities that are "common carriers." For the reasons stated herein, Sprint has not introduced evidence that would support a finding that it is a "telecommunications carrier" when it fulfills its private contract obligations to TWC. Rather, Sprint's arrangement with TWC (and, for that matter, any other cable provider) is an individually negotiated and tailored, private business arrangement shielded from public review and scrutiny.[5] As such, Sprint cannot sustain any claim that it is eligible under Section 251 and Section 252 to assert rights afforded "telecommunications carriers" through its arrangement with Time Warner.

A. The Law Governing the Determination of Common Carriers

The Act and applicable court decisions require that in order for an entity to be a "telecommunications carrier" as defined in 47 U.S.C. § 153(44), it must be a common carrier. *See, Virgin Islands Telephone Corporation v. FCC,* 198 F.3d 921, 926 (D.C.Cir. 1999)

[5] If for the sake of argument it is assumed that Sprint is operating in the status of a "carrier" in providing its private contract services to Time Warner, at most, Sprint can only be acting as a telecommunications contract carrier. *Neb. Rev. Stat.* § 86-120 (2004 Cum. Sup.) defines "telecommunications contract carrier" as "a provider of telecommunications service for hire, other than as a common carrier, in Nebraska intrastate commerce." The Nebraska Supreme Court has unequivocally held that "[c]ontract carriers were not considered common carriers at common law." *Neb. Public Service Com'n v. Neb. Pub. Power Dist.,* 256 Neb. 479, 491 (1999).

(*"VITELCO"); see also National Ass'n of Regulatory Util. Comm'rs v. FCC,* 525 F.2d 630 (D.C. Cir. 1976) *cert denied,* 425 U.S. 992 (*"NARUC I"*). Thus, as a matter of law, only where an entity is a common carrier can that entity assert rights to seek interconnection arrangements under Section 251of the Act. *See* 47 U.S.C. §252(a)(1); *see also* 47 U.S.C. §251(a). The *VITELCO* court also made clear its "key determinant" of common carrier/telecommunications carrier status is whether an entity is "holding oneself out to serve indiscriminately." *VITELCO,* 198 F.3d at 927; *citing NARUC I,* 525 F.2d at 642. "But a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal. It is not necessary that a carrier be required to serve all indiscriminately; it is enough that its practice is, in fact, to do so." *NARUC I, 525 F.2d* at 641 (footnotes omitted); *see also VITELCO,* 198 F.3d at 925. Moreover, since a state commission assumes federal authority when it acts pursuant to Section 252 of the Act, the Commission is required to employ these federal standards when arbitrating an interconnection agreement. *See Bell Atlantic-Delaware, Inc. v. Global NAPs South, Inc.*, 77 F.Supp.2d 492, 500 (D. DE 1999); *compare AT&T Communications Systems v. Pacific Bell,* 203 F.3d 1183, 1188 (9th Cir. 1999); *Indiana Bell Telephone Company, Inc. v. Smithville Telephone Company, Inc.,* 31 F.Supp.2d 628, 632 (S.D. IL 1998).

B. The Facts Demonstrate no Common Carriage When Sprint is Fulfilling Its Private Contract Obligations to Time Warner

Based on the facts in this case, Sprint's efforts to suggest that it is a "common carrier" when it fulfills its private contract obligations to Time Warner is without merit. The record is clear that Sprint individually negotiates its arrangements with potential customers for its network and vendor-like services as the needs of the third party will vary. *See* Burt Testimony at 27 (lines 610-617).

The fact that Sprint negotiates individual private arrangements is illustrated by the existence in Nebraska of not only the Sprint-Time Warner Wholesale Voice Services Agreement, but also the Sprint-Cable Montana LLC Wholesale Voice Services Agreement. *See,* Exhibit 20, Response to Interrogatory No. 9 and confidential attachments. These are distinct, privately negotiated agreements that Sprint assiduously protects as confidential and proprietary. Sprint sought to finesse SENTCO's requests that Sprint admit that each business relationship that it has established with cable companies in Nebraska is individually negotiated and consists of specific terms. *See* Exhibit 20, Response to Requests for Admission No. 5 and 7. Moreover, substantial and unrebutted facts demonstrate that Sprint does not offer its services "indiscriminately."

1. The contract is private between Sprint and Time Warner and treated by Sprint to be highly confidential. Thus, no public disclosure or review has been permitted.

2. Sprint admits that any agreement will be individually tailored to the cable company and Sprint to address the needs and capabilities. *See* Burt Testimony at 27 (lines 610-612). Thus, Sprint individually tailors its arrangements with respect to those entities with which it wishes to contract, an indicia of *non-common carriage*. *See NARUC*, 525 F.2d at 641

3. Sprint has no tariff in place describing the standard business relationship that it will provide to an entity. *See* Burt Testimony at 27 (lines 625-626). Sprint also has not claimed, however, that it seeks to be a contract carrier under Nebraska law nor has it provided any fact that would support such position. *See,* footnote 4 above. While Sprint professes that it will file such tariff if directed by the Commission, that position amounts to nothing more than an empty promise in that no submission of the sort has been made. Even if a tariff filing were to be made, vigorous scrutiny of its terms and conditions would still need to be undertaken to ensure that, *as a matter of fact,* the tariffed relationship was an indiscriminate holding out by Sprint.

4. The only service that Sprint unequivocally states will be offered "to the general public" is Sprint's offering of "exchange access." *See* Burt Testimony at 21-22 (lines 493-499). However, exchange access is the input for telephone toll services (*compare* 47 U.S.C. §§153(16) and 153(48)), and is not local exchange traffic that is subject to Section 251(b)(5) reciprocal compensation according to 47 C.F.R. § 51.701(a) and (b) in which the FCC expressly excluded "intrastate exchange access" from the definition of "telecommunications traffic" to which reciprocal compensation applies.

5. Sprint does not hold itself out to the public, only TWC does. "Sprint has never stated that the product offering will be marketed or sold to end user subscribers in a name or brand other than Time Warner Cable." Tr. 27:20-23.

See also, Pre-Filed Rebuttal Testimony of Steven E. Watkins, Application No. C-3429 ("Watkins Rebuttal") at 18 (line 22) to 20 (line 13).

While Sprint contends that it acts as a "common carrier" when it fulfills it private contract obligations to TWC, the only demonstration of telecommunication carrier status of the parties to this proceeding has been made *solely* by SENTCO. *See* Sickel Testimony at 3 (line 18) to 4 (line 7), and 8 (lines 4 to 14). Under its private contractual business arrangement with TWC that has been negotiated between the parties, Sprint provides certain transport functions and other back-office vendor-like services to TWC while TWC provides the "last mile facilities to the customer, sales, billing, customer service and installation." *See* Burt Testimony at 6 (lines 131-133). However, missing from Sprint's description is the fact that TWC will also be providing a "soft switch." Exhibit 16, Transcript of Hearing, Time Warner Certification Proceeding, Application No. C-3228, at 31 (line 14) to 32 (line 10). Accordingly, the arrangement between Sprint and TWC is purely private and no sustainable basis or fact exists to suggest that Sprint intends to indiscriminately hold itself out to provide service.

Even if there were facts that may otherwise support some demonstration of common carriage when Sprint meets its private contract obligations to TWC, Sprint cannot overcome the fact that there is only *one* user of Sprint's private contract services in Nebraska – TWC. *See* Exhibit 20, Sprint Response to Admission No. 7. As one court noted, there is a substantial question as to whether a "single-network user" could be found to be a "common carrier without being arbitrary and capricious. . . ." *United States Telecom Association v. FCC,* 295 F.3d 1326, 1335 (D.C. Cir. 2002). Thus, as a consequence of Sprint's provision of services to Time Warner,

Sprint cannot seriously contend that its private contract service fits within the "classes of users as to be effectively available directly to the public . . . ." in order to constitute Sprint to be a telecommunications carrier. 47 U.S.C. §153(46). It is equally clear that Sprint cannot rely upon the end users of Time Warner to bootstrap Sprint's obligations under the private contract it has with Time Warner into common carriage. The FCC, as confirmed by the *VITELCO* court, rejected the use of the services provided by the customers of a carrier for purposes of determining the carrier's status as a "telecommunications carrier" (*see VITELCO,* 198 F.3d at 926), and that construct is binding.

Accordingly, Sprint's assertions cannot, *ipso facto,* transform that private contract arrangement it has with TWC into common carriage. As the Petitioner, Sprint must demonstrate its status as a telecommunications carrier/common carrier, and it has not sustained its burden of proof in this regard.

Confronted with the foregoing facts that critically undermine its contentions regarding its common carrier status when it fulfill its private contract obligations to TWC, Sprint now suggests that it is somehow providing the telephone exchange service in "combination" with Time Warner. *See, e.g.,* Tr. 29:7-10 (Assertion that TWC and Sprint are "combining resources" for the provision of competitive local services in SENTCO's service area); *see also* Burt Testimony at 3 (lines 63-67, 68-70), 6 (lines 121-126), 7 (lines 158-159), 25 (lines 564-575). As before, this contention is unavailing to Sprint.

Nowhere in this record does Sprint provide any facts that would establish that any Time Warner customer using TWC's telephone service even knows that Sprint is involved in the process. *See, e.g.,* Burt Testimony, JRB-3 (Purported end user referencing Time Warner Cable as the provider of "digital phone service".) In fact, Sprint witness Burt confirms this fact. *See,*

e.g., Tr. 27:20-28), 29:3-6; *see also* Watkins Rebuttal at 15 (lines 1-9) *quoting* Exhibit 10 (Transcript of Hearing in Application No. C-3204, at 73 (lines 3-9); Exhibit 19 (Time Warner Cable Local Tariff, Section 0.3 (The service under this tariff is not a "joint undertaking" by TWC with another carrier.). Moreover, if Sprint witness Burt's contention were true, Sprint would be acting on behalf of and speaking for TWC which Sprint witness Burt states he does not. *See* Burt Testimony at 8 (line 178).

In any event, Sprint can no more assert that is jointly providing the service with TWC when it is only TWC that has the *sole* relationship with the end users who Time Warner serves than SENTCO could since it is SENTCO's network that originates and terminates calls to Time Warner's end users. Simply saying something does not make it true when the facts and Sprint's own witness indicate otherwise. Further, the Proposed ICA expressly confers no third party beneficiary rights. *See* Exhibit 100, Proposed ICA (attached as Exhibit 2 thereto), Section 17.14. In short, Sprint's contention that it is jointly providing service with TWC should be rejected in its entirety.

C. Conclusion

Sprint has provided no basis to conclude that it is a common carrier when it fulfills its private contract obligations to TWC that allow Time Warner to offer its telephone exchange services. The private contract between Sprint and TWC bears testament to this fact, as does Sprint's decision to base such arrangements on individualized negotiations regarding its individual customer's needs and capabilities. Since Sprint is not a common carrier and thus not a telecommunications carrier in its private contract role with TWC, Sprint cannot and should not be allowed to assert Section 251 and Section 252 rights in this proceeding on behalf of TWC. Accordingly, the Petition for Arbitration should be dismissed or, in the alternative, a specific

finding should be made by the Commission that the third party language included in the Proposed ICA be rejected as being inconsistent with the Act.

IV. EVEN IF SPRINT WERE A TELECOMMUNICATIONS CARRIER WHEN IT FULFILLS ITS PRIVATE CONTRACT OBLIGATIONS TO TWC, SPRINT CANNOT ASSERT ANY RIGHT TO SEEK SECTION 251(b)(5) RECIPROCAL COMPENSATION

This proceeding addresses the reciprocal compensation arrangement between Sprint and SENTCO pursuant to Section 251(b)(5) of the Act. *See, e.g.,* Tr. 31:6-9. The law and the FCC's directives provide the proper analytical construct for purposes of Section 251(b)(5). Section 251(b)(5) focuses on who operates the originating network. Assuming for the sake of argument that Sprint is a telecommunications carrier when it fulfills its private contract obligations to TWC (which Sprint is not), when the Act and FCC's construct is applied in this case, it is clear that Sprint's assertions with respect to Section 251(b)(5) fail. Regardless of Sprint's legal status under its private contract with TWC, the traffic being exchanged plainly does not originate on Sprint's network and it is TWC's network that directly serves the called party. Thus, under any circumstances, Sprint is not legally entitled to assert interconnection rights that are available exclusively to the originating telecommunications carrier. Absent that conclusion, SENTCO's rights under Section 252 of the Act to establish terms and conditions with respect to a Section 251(b)(5) arrangement would be eliminated. These rights include the right to negotiate, arbitrate and otherwise enter an agreement with the telecommunications carrier/common carrier that intends to ultimately compete with SENTCO for a retail end user customer/subscriber.[6]

[6]Sprint notes that other telephone companies have entered into arrangements with Sprint that presumably permit Sprint to include third party traffic. *See* Burt Testimony at 22 (Line 508) to 23 (line 516). Those arrangements are irrelevant to the issues here. *See* Watkins Rebuttal at 21 (lines 18-20). SENTCO is not a party to those agreements and there is no basis to ascertain the basis on which such telephone companies elected to offer arrangements outside the Act. *See id.* What is clear, however, is that SENTCO *did not* agree to negotiate arrangements with respect to third parties (*see* Sickel Testimony at 5 (lines 17-21) and *did not* agree to negotiate such arrangements *without* respect to the requirements of the Act. *See* Exhibit 4, Letter from Paul M. Schudel, Counsel to SENTCO, to Monica M. Barone, Counsel to Sprint, dated January 12, 2005 at 3.

A. Reciprocal Compensation is Applicable to Telecommunications Carriers Serving the Ultimate End User Through that Carrier's End Office Switch or Equivalent Facility

The law is clear that only those entities that provide the end office switching function for its end user customers are able to assert Section 251(b)(5) rights. In establishing the pricing standards for reciprocal compensation, Congress stated clearly that "such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network *of calls that originate on the network facilities of the other carrier.*" 47 U.S.C. § 252(d)(2)(ii) (emphasis added). Moreover, the "origination" of a call occurs *only* on the network of the ultimate provider of end user service, which the FCC confirmed.

> We define "transport," for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that ***directly serves the called party*** *(or equivalent facility provided by an non-incumbent carrier).*

See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Radio Service Providers, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499 (1996) at 16015 (¶1039) (emphasis added). Further, the applicable FCC rules state the same concept.

> (c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to ***the terminating carrier's end office switch that directly serves the called party,*** *or equivalent facility provided by a carrier other than an incumbent LEC.*
>
> *(d) Termination.* For purposes of this subpart, termination is the switching of telecommunications traffic at the *terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called*

party's premises.

(e) Reciprocal compensation. For purposes of this subpart a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the *transport and termination* on each carrier's network facilities of *telecommunications traffic that originates on the network facilities of the other carrier.*

47 C.F.R. §§51.701(c), (d) and (e) (emphasis added).

B. Time Warner Provides the End Office Switching or Functional Equivalent in the Network Arrangement between Time Warner and Sprint

The facts are clear with respect to a call made by a SENTCO end user and delivered by SENTCO to TWC for completion under the Act's reciprocal compensation construct:

1. TWC serves the "called party" and is the only entity with the relationship with that end user that is the called party (*see, e.g.,* Tr. 27:20-23).

2. TWC operates the end office switch or equivalent facility since TWC has a "soft switch" (*see* Exhibit 16, Transcript of Application C-3228 Proceeding at 31 (lines 5-21)) and it is the "soft switch" that performs switching since only those calls that are intended to be sent to the Public Switched Telephone Network are sent to Sprint with all other calls between two TWC end users are switched solely between those end users by TWC (*see, e.g.,* Tr. 43:5-44:6).[7]

3. All calls either originate or terminate on the TWC network facilities. *See, e.g.,* Burt Testimony at 6 (line 131).

Thus, under governing law and FCC rules as applied to the facts in this case, there is no basis to conclude that Sprint can assert Section 251(b)(5) rights, even if Sprint were a "telecommunications carrier" (which it is not). To be sure, Sprint *does not* "directly serve[ ] . . . the called party" (47 C.F.R. §51.701(c)), nor does the traffic "originate" on Sprint's network. 47 C.F.R. § 51.701(e). Rather, it is TWC that owns the "last mile" over which the end user will

[7] Any effort by Sprint to confuse the use of the term "end office switch" with Class 5 end office should be rejected since the term used by the FCC is "end office" or "equivalent facility." *See* 47 C.F.R. §51.701(c). Thus, industry identifiers for Class 5 switches are not controlling. *See* Tr. 147:3-19.

"originate" a call, and it is TWC's facilities that will "directly serve . . . the called party," and it is TWC's "soft-switch" (or Sprint's newly enunciated term for TWC's soft-switch – the TWC "PBX-like switch") that terminates the call and provides the final switching to the called party.

As the record reflects, Sprint is nothing more than a "middle man" in this process, providing what may be viewed as some form of tandem-like functions for which TWC has contracted on a private contract basis. *See* Watkins Rebuttal at 17 (line 22) to 18 (line 3). That tandem function provided by Sprint, however, does not permit Sprint to assert any Section 251(b)(5) rights.

Finally, Sprint's efforts to engage in *post hoc* rationalizations regarding the network arrangement it anticipates having with TWC should be rejected outright. Specifically, Sprint has changed its story to suggest that the TWC-provided network components are comprised of only the "local loop" (*see, e.g.*, Burt Testimony at 6 (lines 131-132), 15 (line 354) to 16 (line 356)), also suggesting that the TWC "soft switch" is now a "PBX-like switch." *Id.* at 16 (line 370)

The Commission is fully aware that TWC operates a "soft switch" and the record confirms that this device provides switching not only for TWC end user to TWC end user calls but also for those calls made by and sent to a TWC end user from another carrier's end users. To suggest, as Sprint does now, that its *current* network description *now* "accurately describes" the configuration between Sprint and TWC and that it "should have been a little more careful in some of the wording that" Sprint used is preposterous. Tr. 50:7-24. At best, Sprint should be admonished for its efforts; at worst, Mr. Burt (and, for that matter, Sprint) has demonstrated an entire lack of credibility on the very critical issue that underscores the Section 251(b)(5) rights and obligations at issue in this proceeding – who provides the end office function or its

equivalent. Sprint's contrived theory based on a "PBX-like switch" and local loop[8] in an effort to explain away those prior statements is a textbook case of *post hoc* rationalization. Even Sprint witness Burt cannot keep track of Sprint's "new" story. "Any – any call that does not go to the public switch telephone network, such as the example that you gave, one Time Warner Cable subscriber to another, would stay within *Time Warner Cable switch.*" Tr. 43:5-9 (emphasis added). Accordingly, SENTCO respectfully requests that absolutely no weight should be afforded Sprint's "eleventh hour" change in course.

C. Conclusion

Congress has confirmed that the Section 251(b)(5) "reciprocal compensation" rights at issue in this proceeding vest *solely within* the telecommunications carrier/common carrier that is the ultimate provider of end user services that seeks to compete directly with SENTCO. Pursuant to Sections 251 and 252, it is those two carriers – SENTCO and the requesting competitive LEC/telecommunications carrier/common carrier that wants to compete for the ultimate end user, Time Warner – which Congress envisioned would negotiate an interconnection agreement for the services and functions established in Section 251(b), and the Commission has recognized this critical linkage. *See C-3228 Order* at 5-6.

Notwithstanding the Act's structure, however, Sprint seeks to assert these rights to interconnection even though Sprint admits that it has no relationship with *any* of the end users at issue and does not operate the end office that provides the switching or its functional equivalent that provides the service to the "called party"/end user. The record is clear that the end user relationship is solely with TWC and the switching function serving that end use is provided by

[8] As SENTCO witness Watkins explained, however, the use of the "PBX-like" reference is to a "private" branch exchange device and TWC is offering telephone exchange service publicly as reflected by the fact of its local tariff. *See* Tr.138:9-139:3. *See also* Exhibit 19. Regardless, Sprint's "PBX-like switch" characterization does not change the fact that Sprint's own witness acknowledged that TWC handles all of the switching for calls between TWC end users. *See* Tr. 43:5-9.

TWC. Accordingly, even if Sprint is a telecommunications carrier when it fulfills its private contract obligations to Time Warner, Sprint cannot assert any right to seek Section 251(b)(5) reciprocal compensation based upon the provisions in Subpart H of the FCC's Rules governing interconnection. Any other conclusion would not only conflict with the requirements of the Act but also eliminates SENTCO's Section 251(b) and 252 rights and ignores the factual record in this case.

V. CONCLUSION

Sprint's efforts amount to nothing more that an effort to eliminate SENTCO's Section 251(b) and Section 252 rights, the proper application of the Act's construct and controlling FCC Rules, and the Commission's binding decision and framework established in its *C-3228 Order* with respect to TWC's obligations *vis-à-vis* interconnection with SENTCO. Accordingly, for all the reasons stated herein and in its Proposed Order filed simultaneously herewith, SENTCO respectfully requests that the Commission reject in their entirety Sprint's positions regarding the outstanding issues in this arbitration. The integrity of the Commission's decision-making process and the reliance upon it demand nothing less.

Thus, SENTCO respectfully requests that the Commission issue its Order herein:

(1) Dismissing Sprint's Petition for Arbitration for the reason that Sprint is not a "telecommunications carrier" within the meaning of § 153(44) of the Act in the SENTCO exchanges and therefore has no right to invoke the compulsory arbitration process under § 252 of the Act; and

(2) Dismissing Sprint's Petition for Arbitration for the reason that Sprint has not sustained its burden (nor could it) that it is entitled to assert any Section 251(b)(5) rights on behalf of any third party including TWC.

(3) Assuming, *arguendo,* that the Petition is not dismissed in its entirety for the reasons stated above, requiring the parties to enter into an interconnection agreement that includes all of the terms agreed to by the parties, but excludes any and all provisions that actually or purportedly would include end user customers of third parties that are non-parties to the Agreement in the scope of the Agreement and thereby resolve Issues No. 1 and 2 in favor of SENTCO, and requiring Sprint and SENTCO to file for approval, pursuant to Section 252(e) of the Act, the Proposed ICA with terms and conditions that conform with the above-described resolution of the Issues.

Dated this 2nd day of September 2005.

Respectfully submitted,

SOUTHEAST NEBRASKA TELEPHONE COMPANY

By: Paul M. Schudel

Paul M. Schudel, #13723
James A. Overcash, #18627
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
(402) 437-8500

and

Thomas J. Moorman, D.C. Bar No. 384790
KRASKIN, MOORMAN & COSSON, LLC
2120 L Street, N.W., Suite 520
Washington, D.C. 20037
(202) 296-8890

Its Attorneys

1319

CERTIFICATE OF SERVICE

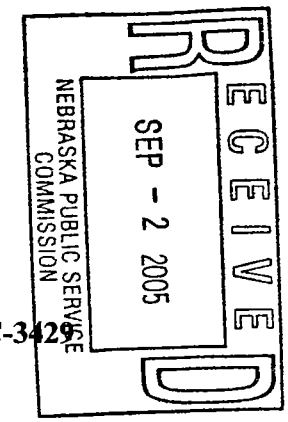
I hereby certify that true and correct copies of the foregoing **POST-HEARING BRIEF** were sent by First-Class U.S. Mail and electronic mail on September 2, 2005, to the following:

Diane C. Browning
6450 Sprint Parkway,
Mailstop KSOPHN0212-2A511
Overland Park, KS 66251

Shana Knutson
Nebraska Public Service Commission
300 The Atrium
1200 N Street
Lincoln, NE 68508

Paul M. Schudel

1320



BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN RE:	)	
	)	
SPRINT COMMUNICATIONS	)	
COMPANY L.P. PETITION FOR	)	**APPLICATION NO. C-3429**
ARBITRATION UNDER THE	)	
TELECOMMUNICATIONS ACT	)	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the attached **PROPOSED ORDER** were sent by First-Class U.S. Mail and electronic mail on September 2, 2005, to the following:

Diane C. Browning
6450 Sprint Parkway,
Mailstop KSOPHN0212-2A511
Overland Park, KS 66251

Shana Knutson
Nebraska Public Service Commission
300 The Atrium
1200 N Street
Lincoln, NE 68508

SOUTHEAST NEBRASKA TELEPHONE COMPANY

By: Paul M. Schudel

Paul M. Schudel, #13723
James A. Overcash, #18627
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
(402) 437-8500

and

Thomas J. Moorman, D.C. Bar No. 384790
KRASKIN, MOORMAN & COSSON, LLC
2120 L Street, N.W., Suite 520
Washington, D.C. 20037
(202) 296-8890

Its Attorneys

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN RE:	)	**APPLICATION NO. C-3429**
SPRINT COMMUNICATIONS COMPANY	)	
L.P. PETITION FOR ARBITRATION	)	Interconnection Agreement
UNDER THE TELECOMMUNICATIONS	)	Approved
ACT	)	As Modified
	)	
	)	September ___, 2005

APPEARANCES:

For: Sprint Communications Company L.P.
Darren S. Weingard
Reed Smith LLP
Two Embarcadero Center, Suite 200
San Francisco, CA 94111
and
Diane C. Browning
6450 Sprint Parkway,
Mailstop KSOPHN0212-2A511
Overland Park, KS 66251

For: Southeast Nebraska Telephone Company
Paul M. Schudel
James A. Overcash
Woods & Aitken LLP
301 South 13th Street, Suite 500
Lincoln, NE 68508
and
Thomas J. Moorman
KRASKIN, MOORMAN & COSSON, LLC
2120 L Street, N.W., Suite 520
Washington, D.C. 20037

For: Nebraska Public Service Commission
Shanicee L. Knutson
300 The Atrium
1200 "N" Street
P.O. Box 94927
Lincoln, NE 68509-4927

1322

BY THE COMMISSION:

I. Procedural History

1. Petitioner, Sprint Communications Company L.P. (Sprint), is a limited partnership that has been certificated by the Nebraska Public Service Commission (Commission or NPSC) to provide competitive local exchange carrier (CLEC or competitive LEC) and other telecommunications services in the State of Nebraska, including local exchange areas served by Southeast Nebraska Telephone Company.

2. Respondent, Southeast Nebraska Telephone Company (SENTCO), is a corporation and is an incumbent local exchange

carrier (ILEC or incumbent LEC) that has been certificated by the Commission to provide LEC and other telecommunications services in certain local exchange service areas in the State of Nebraska.

3. On December 16, 2004, SENTCO received Sprint's request to negotiate the terms and conditions of an interconnection agreement pursuant to § 252(a) of the Telecommunications Act of 1996 (the Act). Thereafter, the parties proceeded with negotiations. As part of that negotiation, SENTCO made clear to Sprint, and Sprint confirmed, that SENTCO would not be engaging in voluntary negotiations "without regard to the standards set forth in subsection (b) . . . of section 251." 47 U.S.C. §252(a)(1); *see also* Ex. 4. As a result of such negotiations, Sprint and SENTCO resolved all but two issues relating to the interconnection agreement.

4. On May 23, 2005, Sprint filed a Petition for Arbitration with the Commission, pursuant to § 252(b) of the Act, seeking arbitration as to the remaining open issues. Attached to the Petition was the Interconnection and Reciprocal Compensation Agreement (the Agreement) between the parties that contains the terms and conditions of interconnection as agreed upon by the parties. The Agreement also reflects in Sections 1.6 and 1.22 the provisions that are disputed between the parties. On June 17, 2005, SENTCO filed its Motion to Dismiss or, in the alternative, its Response to the Petition for Arbitration.

5. On June 14, 2005, in response to SENTCO's Motion requesting that the Commission act as the arbitrator in this matter as opposed to a third party arbitrator, the Commission entered its Order granting SENTCO's Motion and designated the Commission to act as the arbitrator in this matter. Sprint did not oppose such designation.

6. On June 22, 2005, a planning conference was held by the Hearing Officer designated by the Commission for this matter. A Planning Conference Order was entered by the Hearing Officer on June 28, 2005 that approved the parties' agreement that SENTCO's Motion to Dismiss would be resolved in conjunction with the Commission's decision in this proceeding after the presentation of evidence and submission of proposed orders and briefs. Such Order also established a schedule for completion of the arbitration.

7. Subject to § 252(b) and other applicable provisions of the Act, this Commission has jurisdiction over the parties to this arbitration. The issue of the Commission's jurisdiction over Sprint's Petition for Arbitration, which has been challenged by SENTCO's Motion to Dismiss, will be addressed below. The Commission's consideration of this matter is also subject to the Commission's Mediation and Arbitration Policy established in Application No. C-1128, Progression Order No. 3, dated August 19, 2003 (Arbitration Policy) and *Neb. Rev. Stat.* § 86-122 (2004 Cum. Sup.).

8. The hearing of this matter was conducted by the Commission on August 10, 2005 pursuant to the Arbitration Policy, at which evidence and testimony was introduced and received into the record. Pursuant to the Planning Conference Order, following the hearing the parties were advised that proposed orders and Post-Hearing Briefs should be submitted to the Commission on or before September 2, 2005.

II. Arbitrated Issues

9. The two unresolved issues expressly identified and raised by Sprint in its Petition for Arbitration, and addressed in the Response thereto are:

> Issue 1: Should the definition of "End User or End User Customer" include end users of a service provider for whom Sprint provides interconnection and other telecommunications services? (Section 1.6 and as applied elsewhere in the Agreement.)
>
> Issue 2: Should the definition of "Reciprocal Compensation" include the transportation and termination on each carrier's network of all Local Traffic? (Section 1.21 and as applied elsewhere in the Agreement.)

III. Evidentiary Issues

10. On July 29, 2005, Sprint filed a Motion in Limine seeking to exclude from evidence certain documents that SENTCO had identified as exhibits in response to the schedule requirements set forth in the Planning Conference Order. SENTCO submitted a written Response to the Motion in Limine. On August 5, 2005, the Hearing Officer entered an Order that granted Sprint's Motion with regard to Exhibits 7, 13 and 14, and overruled Sprint's Motion in all other respects.

11. At the hearing, SENTCO offered Exhibits 7, 13 and 14 in evidence. The Hearing Officer reserved ruling on these offers and on August 17, 2005 issued a Hearing Officer Order sustaining Sprint's objections to such exhibits. On further consideration of the Hearing Officer's ruling concerning the admissibility of that portion of Exhibit 7 (page 3 thereof) offered in evidence by SENTCO (Tr. 48:9-15), the Commission finds that the designated portion of Exhibit 7 should be admitted into evidence based upon *Neb. Rev. Stat.* §§ 84-914(1), 27-607 and 27-613 and the arguments presented by SENTCO's legal counsel (Tr. 49:16-25 and 53:6-55:9). The Commission finds that the portion of Exhibit 7 offered in evidence by SENTCO "possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs" which is the standard of admissibility provided by Section 84-914(1) that is applicable to this case. In admitting page 3 of Exhibit 7 into evidence, the Commission recognizes that Sprint has designated this information to be confidential and therefore, this evidence shall be placed under seal in the Commission's records of this matter. Except with regard to Exhibit 7, the Hearing Officer's August 5 and August 17, 2005 Orders are affirmed by the Commission.

12. On August 8, 2005, Sprint also filed a Motion to Strike the Rebuttal Testimony of Steven E. Watkins. SENTCO submitted a Response to the Motion to Strike on August 9, 2005. Later in the day on August 9, the Hearing Officer entered an Order denying the Motion to Strike. Mr. Watkins testified at the hearing of this matter and his Pre-filed Rebuttal Testimony and attachments were received in evidence as Exhibit 22. The Commission affirms the Hearing Officer's August 9, 2005 denial of Sprint's Motion to Strike and the admission of Exhibit 22 in evidence. We do not regard this rebuttal testimony as Mr. Watkins' testifying to a legal question as Sprint contends in its Motion to Strike, any more than similar statements regarding the Act and applicable FCC rules that are cited and addressed by Sprint's witness, James Burt. Moreover, the rules of evidence upon which Sprint relies in support of its Motion to Strike are not applicable to this proceeding. The Commission will make findings and conclusions of law. Not only did SENTCO *not* engage in "sandbagging" as contended by Sprint (and about which we want to again agree with the Hearing Officer's displeasure with the use of unnecessary rhetoric), SENTCO was within its rights to have Mr. Watkins file rebuttal to the assertions that Mr. Burt made in his pre-filed direct testimony. Finally, we note that Sprint independently decided not to cross-examine Mr. Watkins (*see* Tr. 145:6-12).

IV. Commission Jurisdiction under the Act

13. Section 252(e)(1) of the Act requires that any interconnection agreement adopted by arbitration be submitted to the state commission for approval. The Commission's review of the arbitrated agreement is limited by §252(b)(4) of the Act, which provides, "Action by State Commission. (A) The state commission shall limit its consideration of any petition [for arbitration] under paragraph (1) [of §252(b) of the Act] (and any response thereto) to the issues set forth in the petition and the response, if any, filed under paragraph (3)." Thus, in reviewing this matter, the Commission is statutorily constrained to only consider the issues raised by the parties in the Petition for Arbitration and in the Response within the meaning of §252(b)(4). If necessary, however, §252(b)(4)(B) of the Act provides that "the commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision . . ."

14. Also, in reviewing interconnection agreements, state commissions are allowed, pursuant to §252(e)(3) of the Act, to utilize and enforce state law in the review of agreements. Accordingly, the Commission may also consider the Nebraska Legislature's directive that: "Interconnection agreements approved by the commission pursuant to §252 of the Act may contain such enforcement mechanism and procedures that the commission determines to be consistent with the establishment of fair competition in Nebraska telecommunications markets." *Neb. Rev. Stat.* §86-122(1).

15. In order to fully implement §252(e), the Commission has adopted the Arbitration Policy. Under that Policy, the Commission may only approve arbitrated agreements that: "1) ensure that the requirements of §251 of the Act and any applicable Federal Communications Commission ("FCC") regulations under that section are met; 2) establish interconnection and network element prices consistent with the Act; and 3) establish a schedule for implementation of the agreement (pursuant to §252(c))."

16. In fulfilling its obligations under the Act and Nebraska statutes, the Commission has reviewed the Agreement submitted by the parties, the pending Motion to Dismiss filed by SENTCO, the entire record of this proceeding established through the hearing on August 10, 2005, and the parties' post-hearing briefs and proposed orders.

V. Fact Summary

17. While we have reviewed the entirety of the record developed in this proceeding, we provide this general summary of the positions of the parties to provide context to our Findings and Conclusions contained in Section VI, below. As the record confirms, if Sprint's intended use of the Interconnection Agreement were limited to Sprint's provision of telecommunications service to Sprint retail customers located in SENTCO's exchange service areas, there is consensus that no issues would exist between the parties requiring resolution in this arbitration. (Tr. 99:14-19) However, Sprint desires to utilize the Agreement in connection with Sprint's business arrangement with Time Warner Cable Information Services (Nebraska), LLC d/b/a Time Warner Cable (Time Warner) to support Time Warner's offering of local and long distance voice services in the Falls City area. (*See* Ex. 1, Petition at pages 3-4) SENTCO disputes that Sprint is entitled to utilize the Agreement for the benefit of Time Warner or any other third party. (*See generally,* Ex. 2)

18. The evidence in the record clearly establishes that with regard to the issues presented in this arbitration, Sprint will not be the retail provider of telecommunications services. Rather, Time Warner will provide retail voice telecommunications services, will exclusively have all customer relationships, will market the service in the name of Time Warner, will perform all billing functions and will resolve all customer complaints. (Tr. 27:9-28:1) Sprint has entered into a Wholesale Voice Services Agreement with Time Warner pursuant to which Sprint intends to provide certain telecommunications services to Time Warner on a wholesale basis. (Ex. 20, Confidential Attachment)

19. The network over which telecommunications service is proposed to be provided to Time Warner's customers consists of a combination of Sprint and Time Warner facilities. (*See,* Ex. 107) In the case of a call originated by a Time Warner customer to another Time Warner customer, the call would be handled entirely by Time Warner on its own network. (Ex. 16, 13:14-23) In the case of a call originated by a Time Warner customer to a party that is not a Time Warner customer, the call travels from the customer's premises over Time Warner facilities to the Time Warner soft switch which routes the call to a gateway device that converts the call from Internet Protocol to circuit switched format, at which point the call would be passed to the Sprint network for termination. (Ex. 16, 14:2-15, 31:5-21 and Ex. 12, exhibit E) Time Warner's soft switch is responsible for

routing of calls originated by Time Warner customers. (Ex. 16, 32:4-10) The soft switch directly serves the Time Warner customer.

20. In the Commission's Order granting Time Warner certification as a CLEC entered in Application No. C-3228 on November 23, 2004, we identified the process with which Time Warner was required to comply prior to offering of service in competition with SENTCO. Therein we stated at pages 5-6 that Time Warner must:

1. File written notice with the Commission when a bona fide request has been sent either by it or its underlying carrier to a rural ILEC.
2. The rural ILEC then will have 30 days in which to notify the Commission that it intends to raise the rural exemption as a reason not to negotiate or arbitrate an agreement.
3. The Commission will rule on the rural exemption in accordance with the Telecommunications Act of 1996 (Act).
4. The parties will either negotiate or arbitrate an agreement. The parties will file the agreement for approval. The Commission will then approve or reject the agreement in accordance with the Act.

Time Warner has not taken any of the foregoing steps. Rather, Sprint takes the position that it is entitled to establish an interconnection agreement with SENTCO that will apply to end user customers of a third-party telecommunications carrier such as Time Warner.

21. SENTCO has confirmed that in the future event that Time Warner requests negotiation of the terms and conditions of interconnection, SENTCO will engage in good faith negotiations with Time Warner. (Tr. 106:18-25)

22. Sprint's witness, James Burt, testified that Sprint indiscriminately offers the interconnection services described in the Wholesale Agreement to any entity that has last-mile facilities comparable to cable companies. (Tr. 29:25-30:4, Ex. 102, lines 599-626) However, the terms of the Wholesale Agreement and the terms of the Montana LLC Wholesale Voice Services Agreement differ. (*See*, Ex. 20, Response to Interrogatory No. 9 and compare confidential attachments thereto.) Further, although Mr. Burt states that Sprint will

file a tariff for this offering, Sprint has made no such filing with the Commission to date. (*See also*, Ex. 22, 18:16-21:14)

VI. Findings and Conclusions

A. Preliminary Matters

24. Before proceeding with our findings and conclusions with respect to the issues in this matter, we address three preliminary matters. First, even though Time Warner is not a party to this docket, the record is clear that there is no issue regarding our jurisdiction over Time Warner. Sprint unequivocally stated that the service that will be provided is equivalent to Plain Old Telephone Service. *See*, Tr.56:3-16; Ex. 102, Burt Testimony at 17 (lines 391-401). Accordingly, any issue regarding the Commission's jurisdiction over Voice Over Internet Protocol service providers is irrelevant.

25. Second, we are aware that certain telephone companies may have entered into interconnection arrangements with Sprint that would facilitate Sprint's private contractual obligations with Time Warner. *See* Ex. 102, Burt Testimony at 22 (Line 508) to 23 (line 516). We agree with SENTCO that those arrangements are also irrelevant to the issues presented since SENTCO is not a party to those agreements and there is no basis to ascertain the basis on which such telephone companies elected to offer arrangements outside of the requirements of the Act. *See* Ex. 22, Watkins Rebuttal at 21 (lines 18-20). SENTCO has clearly demonstrated that it did not agree to negotiate arrangements with respect to third parties. *See* Ex. 3, Sickel Testimony at 5 (lines 17-21). SENTCO also did not agree to negotiate such arrangements *without* respect to the requirements of the Act. *See* Ex. 4, Letter from Paul M. Schudel, Counsel to SENTCO, to Monica M. Barone, Counsel to Sprint, dated January 12, 2005 at 3. Accordingly, other arrangements that Sprint may have entered have little probative value to our decision in this proceeding.

26. Finally, we are also aware that other state commissions have addressed the type of private contract relationship established between Sprint and Time Warner. We do not wish to second-guess those decisions but we have engaged in extensive fact-finding in this proceeding and we will take into consideration the directives made by this Commission in the *C-3228 Order*. It is this Commission's right, as well as its statutory duty, to assess independently the facts presented to it, and we will now proceed with our Findings and Conclusions.

B. Discussion

27. While Sprint has advanced two issues and has formulated such issues on the basis of the relevant provisions of the Agreement, the issue in this proceeding is straightforward and can be expressed as follows:

> May Sprint limit SENTCO's rights under the Act to engage in bilateral negotiations with the entity that intends to compete with SENTCO for end users through Sprint's proposed definition of "end user" within the Agreement to include third parties?

For the reasons stated herein, we find Sprint's proposal to be unsound.

28. As discussed below, we find Sprint's efforts to include Time Warner within the coverage of the Agreement directly conflicts with our directives arising from our November 23, 2004 decision in Application No. C-3228 (the "*C-3228 Order*").

29. This conclusion is independently confirmed by applying the case law, the Act, and the FCC's Rules to the facts of this case. Even if we were to conclude that including Time Warner in the Agreement is not contrary to our *C-3228* Order, Sprint has failed to demonstrate, based on the record here, that it is a "telecommunications carrier" (47 U.S.C. §153(44)) when it acts under its private contract with Time Warner. Further, even if we were to conclude that in the context of this matter Sprint is a telecommunications carrier, the right to assert Section 251(b)(5) rights under the Act resides only with Time Warner as the entity operating the end office switch or, in this case its functional equivalent - the Time Warner soft switch - that directly serves the called party.

30. Through this soft switch, Time Warner ensures that only calls destined to the Public Switched Telephone Network originated by a Time Warner end user are transported through Sprint for termination, and it is through this soft switch that all calls are correctly routed to the Time Warner end user customers. Further, it is this soft switch that routes and delivers calls within the Time Warner network between two Time Warner end users. In this latter class of calls, Time Warner in no way utilizes the Sprint transport arrangement that Sprint and

Time Warner have established through their private contract. Accordingly, we find that the soft switch operated by Time Warner provides the switching envisioned by the applicable FCC Rules and the Act. Consequently, under the Sprint/Time Warner private contract, it is *only* Time Warner, as the owner of the soft switch, that can request a section 251(b)(5) reciprocal compensation arrangement from SENTCO. Based on these facts and conclusions, we would grant SENTCO's Motion to Dismiss even if our *C-3228 Order* did not otherwise require rejection of Sprint's expansion of the end user definition in the Agreement to include third parties.

31. We find this result to be just and reasonable and in the public interest. Absent Time Warner entering into interconnection negotiations with SENTCO to establish the terms of interconnection to offer telecommunications services within the SENTCO service area, there is no rational way for SENTCO to ensure that it will be able to address and negotiate with Time Warner the full array of business and interconnection issues that SENTCO has the legal right to address within an interconnection agreement. We also find SENTCO's testimony on this point compelling (*see, Ex. 3,* Sickel Testimony at 5 (lines 20-27)), and entirely consistent with the public policy considerations and rationale upon which we determined in our *C-3228 Order* that it is Time Warner that must seek negotiation directly with SENTCO as a condition precedent to establishing interconnection with SENTCO. Any concerns regarding delays associated with negotiations between Time Warner and SENTCO have been caused by conscious choices that Sprint and Time Warner have made. If Time Warner had promptly submitted a bona fide request for interconnection with SENTCO following the entry of the *C-3228 Order,* the time period for conclusion of negotiations and any required arbitration would have been completed prior to the date of this Order based on the 270 day time frame provided in 47 U.S.C. §252(b)(4)(C).

1. The *C-3228 Order*

32. There is no question that the "third party" that Sprint is seeking to include in the Agreement with SENTCO is Time Warner. "Sprint seeks interconnection with SENTCO in order to provide interconnection services to Time Warner Cable which will allow facilities-based local voice competition to be offered in competition with SENTCO." Tr. 27:4-8; *see also* Ex. 102, Burt Testimony, at 3 (lines 63-67), 6 (lines 131-133), 7 (lines 146-159) and 8 (lines 178-181). We have already

enunciated, however, the process by which Time Warner must seek interconnection with SENTCO.

> Accordingly, *prior to the offering of service in competition with Southeast Nebraska Telephone Company* . . . under this certificate, the Applicant [Time Warner] must:
>
> 1. File written notice with the Commission when a bona fide request has been sent either by it or its underlying carrier to a rural ILEC.
>
> 2. The rural ILEC then will have 30 days in which to notify the Commission that it intends to raise the rural exemption as a reason not to negotiate or arbitrate an agreement.
>
> 3. The Commission will rule on the rural exemption in accordance with the Telecommunications Act o0f 1996 (Act).
>
> 4. *The parties will either negotiate or arbitrate an agreement.* The parties will file the agreement for approval. The Commission will then approve or reject the agreement in accordance with the Act.

C-3228 Order at 5-6 (emphasis added).

33. We find no plausible reason on this record as to why our directives should not have been followed by Time Warner and Sprint. Our *C-3228 Order* directives established the process for the establishment of an interconnection arrangement for the exchange of traffic between end users of Time Warner and SENTCO, and the time for reconsideration or appeal of the *C-3228 Order* has passed. *See, Neb. Rev. Stat. § 75-136 (Reissue 2003).* Moreover, it is clear on this record that the process we anticipated would occur between Time Warner and SENTCO has not, in fact, occurred. *See* Ex. 3, Sickel Testimony at 5 (lines 17-21); Tr. 124:2-5.

34. Accordingly, Sprint's efforts to include Time Warner within the Agreement - which is the only third party Sprint has brought forward - violates our directives established in the *C-*

3228 Order. We find that Sprint and Time Warner should not be permitted to ignore the directives of the *C-3228 Order*. Both the integrity of and proper reliance upon the Commission's decision-making process demand this result. As our *C-3228 Order* indicates, if Time Warner wants to compete with SENTCO, Time Warner should seek interconnection with SENTCO and stand ready, willing and able to negotiate and/or arbitrate an interconnection agreement with SENTCO.

2. Telecommunications Carrier Status

35. While we find that our *C-3228 Order* addresses Sprint's issue in this proceeding, we also find, independently, that we reach the same conclusion based on applying applicable case law, the Act and controlling FCC Rules. A necessary pre-condition for an entity to assert rights under §§ 251 (a) or (b) of the Act is that it must be a "telecommunications carrier." *Compare* 47 U.S.C. §§ 153(44), 251(a), and 252(a)(1). Section 153(44) defines "telecommunications carrier" as "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in Section 226)." Section 153(46), in turn, defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

36. Relevant FCC and judicial precedents have interpreted the definition of "telecommunications carrier" to include only those entities that are "common carriers." *See, Virgin Islands Telephone Corporation v. FCC*, 198 F.3d 921, 926 (D.C.Cir. 1999) (*"VITELCO"); see also National Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630 (D.C. Cir. 1976) *cert denied*, 425 U.S. 992 (*"NARUC I"*). Thus, as a matter of law, only where an entity is a common carrier can that entity assert rights to seek interconnection arrangements under Section 251 of the Act. *See* 47 U.S.C. §252(a)(1); *see also* 47 U.S.C. §251(a). The *VITELCO* court also made clear that the "key determinant" of common carrier/telecommunications carrier status is whether an entity is "holding oneself out to serve indiscriminately." *VITELCO*, 198 F.3d at 927; *citing NARUC I*, 525 F.2d at 642. "But a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal. It is not necessary that a carrier be required to serve all indiscriminately; it is enough that its practice is, in fact, to do so." *NARUC I, 525 F.2d* at 641

(footnotes omitted); *see also VITELCO*, 198 F.3d at 925. Moreover, since a state commission assumes federal authority when it acts pursuant to Section 252 of the Act, the Commission is required to employ these federal standards when arbitrating an interconnection agreement, *See Bell Atlantic-Delaware, Inc. v. Global NAPs South, Inc.*, 77 F.Supp.2d 492, 500 (D. DE 1999); *compare AT&T Communications Systems v. Pacific Bell*, 203 F.3d 1183, 1188 (9th Cir. 1999); *Indiana Bell Telephone Company, Inc. v. Smithville Telephone Company, Inc.*, 31 F.Supp.2d 628, 632 (S.D. IL 1998).

37. Applying these standards to the record before us, we find that Sprint has not introduced evidence that would support a finding that it is a "telecommunications carrier" when it fulfills it private contractual obligations to Time Warner. Rather, Sprint's arrangement with Time Warner (and, for that matter, any other cable provider) is an individually negotiated and tailored, private business arrangement shielded from public review and scrutiny. As such, Sprint cannot sustain any claim that it is eligible under Section 251 and Section 252 to assert rights afforded "telecommunications carriers" through its arrangement with Time Warner.

38. We base this decision on our conclusion that Sprint does not hold itself out "indiscriminately" to the general public or to a class of users to be effectively available directly to the public. This conclusion, in turn, is amply supported by substantial evidence in the record.

39. First, the Wholesale Voice Services Agreement is a private contract between Sprint and Time Warner and is treated by Sprint as highly confidential. Thus, no public disclosure or review has been permitted.

40. Second, Sprint states that any agreement will be individually tailored to the cable company with which Sprint is contracting, and Sprint will address the needs and capabilities as presented. *See* Ex. 102, Burt Testimony at 27 (lines 610-612). The record is clear that Sprint individually negotiates its private arrangements with potential carrier customers as the network and service needs of such parties will vary. *See* Ex. 102, Burt Testimony at 27 (lines 610-617). Independently, the individualized nature of Sprint's arrangements is demonstrated by the existence of both the Sprint-Time Warner Wholesale Voice Services Agreement and the Sprint-Cable Montana LLC Wholesale Voice Services Agreement. *See*, Ex. 20, Response to

Interrogatory No. 9, confidential attachments. Thus, substantial record evidence confirms that Sprint individually tailors its arrangements with respect to those entities with which it wishes to contract, an indicia of *non-common carriage*. *See NARUC*, 525 F.2d at 641

41. Third, Sprint has no tariff in place describing the standard business relationship that it will provide to an entity. *See* Ex. 102, Burt Testimony at 27 (lines 625-626). While Sprint has indicated that it will file such tariff if directed by the Commission, we question that suggestion in that no submission of the sort has been made. Even if a tariff filing were to be made, we believe that the terms and conditions of such filing would be subjected to our traditional, vigorous scrutiny to ensure that, *as a matter of fact*, the tariffed relationship was an indiscriminate holding out by Sprint. Thus, Sprint's suggestion that it will file a tariff and that such tariff will constitute an "indiscriminate" holding out is, at best, speculation.

42. Fourth, the only service that Sprint unequivocally states will be offered "to the general public" is Sprint's offering of "exchange access." *See id.* at 21-22 (lines 493-499). However, we note that exchange access is the input for telephone toll services (*compare* 47 U.S.C. §§153(16) and 153(48)), and is not local exchange traffic that is subject to Section 251(b)(5) reciprocal compensation according to 47 C.F.R. § 51.701(a) and (b) in which the FCC expressly excluded "intrastate exchange access" from the definition of "telecommunications traffic" to which reciprocal compensation applies.

43. Finally, Sprint does not hold itself out to the public, only Time Warner does. "Sprint has never stated that the product offering will be marketed or sold to end user subscribers in a name or brand other than Time Warner Cable." Tr. 27:20-23. *See also,* Ex. 22, Watkins Rebuttal at 18 (line 22) to 20 (line 13).

44. If for the sake of argument it is assumed that Sprint is operating in the status of a "carrier" in providing the network and vendor-like services to Time Warner pursuant to a private contract, Sprint can, at most, only be acting as a telecommunications contract carrier. *Neb. Rev. Stat.* § 86-120 (2004 Cum. Sup.) defines "telecommunications contract carrier" as "a provider of telecommunications service for hire, other than as a common carrier, in Nebraska intrastate commerce." The Nebraska Supreme Court has unequivocally held that "[c]ontract

carriers were not considered common carriers at common law." *Neb. Public Service Com'n v. Neb. Pub. Power Dist.*, 256 Neb. 479, 491 (1999).

45. Likewise, even if there were facts that may otherwise support some demonstration of common carriage when Sprint fulfills it private contractual obligations to Time Warner, Sprint cannot overcome the fact that there is only *one* user of Sprint's private contract services in Nebraska - Time Warner. *See* Ex. 20, Sprint Response to Admission No. 7. As one court noted, there is a substantial question as to whether a "single-network user" could be found to be a "common carrier without being arbitrary and capricious. . . ." *United States Telecom Association v. FCC*, 295 F.3d 1326, 1335 (D.C. Cir. 2002). Thus, as a consequence of Sprint's provision of services to Time Warner, Sprint cannot seriously contend that its private contract service fits within the "classes of users as to be effectively available directly to the public . . . ." in order to constitute Sprint to be a telecommunications carrier. 47 U.S.C. §153(46). It is equally clear that Sprint cannot rely upon the end users of Time Warner to bootstrap Sprint's private contractual role into common carriage. The FCC, as confirmed by the *VITELCO* court, rejected the use of the services provided by the customers of a carrier (in this case Time Warner) for purposes of determining the carrier's status as a "telecommunications carrier" (*see VITELCO*, 198 F.3d at 926), and that construct is binding.

46. While we recognize that the record may suggest that Sprint is somehow providing the telephone exchange service in "combination" with Time Warner (*see, e.g.*, Tr. 29:7-10 (Assertion that Time Warner and Sprint are "combining resources" for the provision of competitive local services in SENTCO's service area.); *see also* Ex. 102, Burt Testimony at 3 (lines 63-67, 68-70), 6 (lines 121-126), 7 (lines 158-159), 25 (lines 564-565)), we find that aspect of the record unpersuasive. Nowhere in this record does Sprint provide any facts that would establish that any Time Warner customer using Time Warner's telephone service even knows that Sprint is involved in the process. *See, e.g.*, Ex. 102, Burt Testimony, JRB-3 (Purported end user referencing Time Warner Cable as the provider of "digital phone service".) In fact, Sprint witness Burt confirms this fact. *See, e.g.*, Tr. 27:20-28:1 and 29:3-6; *see also* Ex. 22, Watkins Rebuttal at 15 (lines 1-9); Ex. 10, at 73 (lines 3-9); Ex. 19, Section 0.3 (The service under this tariff is not a "joint undertaking" by Time Warner with another carrier.). Moreover, if Sprint witness Burt's contentions were true, Sprint

would be acting on behalf of and speaking for Time Warner which Sprint witness Burt states he does not. *See* Ex. 102, Burt Testimony at 8 (line 178). In any event, we find that Sprint can no more assert that it is jointly providing the service with Time Warner when it is only Time Warner that has the *sole* relationship with the end users who Time Warner serves than SENTCO could since it is SENTCO's network that originates and terminates calls to Time Warner's end users. Simply saying something does not make it true when the facts and Sprint's own witness indicate otherwise, and the Agreement expressly confers no third party beneficiary rights. *See* Ex. 1, Agreement attached as exhibit 2 thereto, Section 17.14.

47. Accordingly, Sprint's assertions cannot, *ipso facto,* transform the private contract arrangement it has with Time Warner into common carriage. There is no sustainable basis or fact in this record to support a contrary conclusion. As the Petitioner, Sprint must demonstrate its status as a telecommunications carrier/common carrier, and it has not sustained its burden of proof in this regard.

3. Reciprocal Compensation Rights under Section 251(b)(5)

48. Even if Sprint were a telecommunications carrier when it fulfills its private contractual obligations to Time Warner, we also find that Sprint cannot assert any right to seek section 251(b)(5) reciprocal compensation, which is at issue in this proceeding. *See, e.g.,* Tr. 31:6-9. Applicable FCC directives provide the proper analytical construct for purposes of a Section 251(b)(5) analysis. When the Act's and FCC's construct is applied in this case, it is clear that Sprint's assertions with respect to Section 251(b)(5) fail.

49. In establishing the pricing standards for reciprocal compensation, Congress stated clearly that "such terms and conditions [for reciprocal compensation] provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network *of calls that originate on the network facilities of the other carrier.*" 47 U.S.C. § 252(d)(2)(ii) (emphasis added). Moreover, the "origination" of a call occurs *only* on the network of the ultimate provider of end user service, which the FCC confirmed.

> We define "transport," for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two

> carriers to the terminating carrier's end office switch that ***directly serves the called party*** *(or equivalent facility provided by an non-incumbent carrier).*

See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Radio Service Providers, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499 (1996) at 16015 (¶1039) (emphasis added). Further, the applicable FCC rules state the same concept.

> (c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to ***the terminating carrier's end office switch that directly serves the called party,*** *or equivalent facility provided by a carrier other than an incumbent LEC.*
>
> *(d) Termination.* For purposes of this subpart, termination is the switching of telecommunications traffic at the *terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party' s premises.*
>
> *(e) Reciprocal compensation.* For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the *transport and termination* on each carrier's network facilities of *telecommunications traffic that originates on the network facilities of the other carrier.*

47 C.F.R. §§51.701(c), (d) and (e) (emphasis added).

50. When these standards are applied to the facts, we find that substantial record evidence confirms that it would be Time Warner *not* Sprint that could assert the right to seek a reciprocal compensation arrangement under section 251(b)(5) with SENTCO. First, the record is clear that Time Warner serves the "called party" and is the only entity with the relationship with

that end user that is the called party. (*See, e.g.*, Tr. 27:20-23, 28:3-6)

51. Second, Time Warner operates the end office switch or equivalent facility since Time Warner has a "soft switch" (*see* Ex. 16, at 31 (lines 5-21)); it is the soft switch that performs switching since only those calls that are intended to be sent to the Public Switched Telephone Network are sent to Sprint with all other calls between Time Warner end users being switched solely between those end users by Time Warner. *See, e.g.*, Tr. 43:5-44:6. To this end, we agree with SENTCO that Sprint's efforts to equate the term "end office switch" with a Class 5 end office should be rejected. Since the term used by the FCC is "end office" or "equivalent facility" (*see* 47 C.F.R. §51.701(c)), industry identifiers for Class 5 switches are not controlling. *See* Tr. 147:3-19.

52. Finally, the record confirms that all calls either originate or terminate on the Time Warner network facilities. *See, e.g.*, Ex. 102, Burt Testimony at 6 (line 131). Therefore, Sprint *does not* "directly serve . . . the called party" (47 C.F.R. §51.701(c)), nor does the traffic "originate" on Sprint's network. 47 C.F.R. § 51.701(e). Rather, it is Time Warner that owns the "last mile" over which the end user will "originate" a call, it is Time Warner's facilities that will "directly serve . . . the called party," and it is Time Warner's soft switch (or Sprint's newly enunciated term for Time Warner's soft switch - the Time Warner "PBX-like switch") that terminates the call and provides the final switching to the called party.

53. We find unpersuasive and somewhat troubling Sprint's efforts to engage in *post hoc* rationalizations regarding the network arrangement it anticipates having with Time Warner. The record is clear that Sprint changed its position to suggest that the Time Warner-provided network components are comprised of only the "local loop" (*see, e.g.*, Ex. 102, Burt Testimony at 6 (lines 131-132), 15 (line 354) to 16 (line 356) and Ex. 107), also suggesting that the Time Warner soft switch is now a "PBX-like switch." (Ex. 102, Burt Testimony at 16 (line 370)). We are, however, fully aware that Time Warner operates a soft switch and the record confirms that this device provides switching not only for Time Warner end user to Time Warner end user calls but also for those calls made by and sent to a Time Warner end user from another carrier's end users.

54. Accordingly, we reject Sprint's efforts to suggest that its *current* network description *now* "accurately describes"

the configuration between Sprint and Time Warner and that it "should have been a little more careful in some of the wording" that Sprint previously used to describe such network. Tr. 50:7-24. Even during his testimony at the hearing, Sprint witness Burt stated: "Any - any call that does not go to the pubic switch telephone network, such as the example you gave, one Time Warner Cable subscriber to another, would stay within *Time Warner Cable switch.*" Tr. 47:5-9 (emphasis added). We do not credit Sprint's attempts to portray its switching facilities as the switch that directly serves the Time Warner end users.

VII. Resolution of the Issues

A. Issue No. 1

Should the definition of "End User or End User Customer" include end users of a service provider for whom Sprint provides interconnection and other telecommunications services? (Section 1.6 and as applied elsewhere in the Agreement.)

55. For the reasons stated in Section VI above, we find that this issue should be resolved in favor of SENTCO and that any reference to "third party" or "third parties" within the definition of "end user" be removed.

B. Issue No. 2

Should the definition of "Reciprocal Compensation" include the transportation and termination on each carrier's network of all Local Traffic? (Section 1.21 and as applied elsewhere in the Agreement.)

56. For the reasons stated in Section VI above, we find that this issue should be resolved in favor of SENTCO and that no third party traffic shall be subject to this Agreement. Thus, the only traffic that will be exchanged between SENTCO and Sprint under the terms of the Agreement is that which is generated by or terminated to the end user customers physically located within the SENTCO certificated area and for which both SENTCO and Sprint shall compete to provide retail end user services.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the issues presented in the Petition for

Arbitration filed by Sprint shall be resolved in accordance with the foregoing Findings and Conclusions.

IT IS FURTHER ORDERED that an interconnection agreement containing the terms and conditions consistent with the findings set forth herein shall be filed with the Commission not later than September ___, 2005.

MADE AND ENTERED in Lincoln, Nebraska on this ___ day of September, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS
CONCURRING:

Chair

ATTEST:

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN RE: **SPRINT COMMUNICATIONS COMPANY L.P.'S PETITION FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT.**	**APPLICATION NO: C-3429**

POST-HEARING BRIEF OF
SPRINT COMMUNICATIONS COMPANY L.P.

TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY OF SPRINT'S POSITION 1

II. ARGUMENT 3

A. To Promote Competition, Congress Broadly Required Interconnection In The Telecommunications Act Of 1996 3

B. The Rural Exemption Is Not Implicated In This Proceeding. 4

C. Arbitration Issue No. 1 - The Definition Of "End User" Or "End User Customer" Should Include End Users Of Service Providers For Whom Sprint Provides Interconnection And Other Telecommunications Services Under the Agreement (Section 1.6 and as applied elsewhere in the Agreement) 5

1. Sprint Has A Right To Interconnect With SENTCO Because Sprint Is Offering Telephone Exchange Service And Exchange Access In A Manner That Renders The Service "Effectively Available To The Public" 6

2. Final Opinions From The State Commissions To Have Considered Identical Issues Have Unanimously Held That Service Providers Requesting Interconnection Under Similar Business Models Are Telecommunications Carriers And Are Entitled To Interconnection Under The Act 9

3. The Iowa Utilities Board Currently Is Reconsidering The Only State Commission Decision Arguably Adverse To Sprint's Position. 11

4. SENTCO's Reliance On The *Virgin Islands Telephone* Case Is Misplaced. 12

5. Sprint Satisfies The NARUC I Test. 15

6. It Is Sprint's Network, Not TWC's Network, That Will Be Physically Interconnecting With SENTCO's Network. Therefore Sprint Is Entitled To An Interconnection Agreement With SENTCO In Its Own Name. 17

D. Arbitration Issue No. 2 - "Reciprocal Compensation" Should Include The Transportation And Termination On Each Carrier's Network For All Local Traffic, Including Traffic Originated And Terminated By Sprint For TWC End Users (Section 1.21 and as applied elsewhere in the Agreement) 18

1. SENTCO Cannot Dispute That Section 251(b)(5) Imposes An Independent Obligation On LECs To Establish Reciprocal Compensation Arrangements With Other Telecommunications Carriers 19

TABLE OF CONTENTS

Page

2. Sprint Will Provide Transport And Termination Of Telecommunications Traffic Between TWC's Subscribers And The PSTN Which, For Reciprocal Compensation Purposes, Originates And Terminates On Sprint's Network. 23

3. SENTCO's Assertion That The Presence Of A Third Carrier In The Local Traffic Flow Eliminates The Right To Reciprocal Compensation Lacks Merit. 28

4. The State Commissions In Illinois And New York Expressly Recognized Sprint's Right to Reciprocal Compensation 32

5. The Testimony Of SENTCO's "Expert" Witness Is Entitled To Little Or No Weight 33

III. CONCLUSION 35

TABLE OF AUTHORITIES

Page

CASES

Atlas Tel. Co. v. Oklahoma Corp. Comm'n,
400 F.3d 1256 (2005) 5, 21, 22, 31, 32

Dowd v. United Steelworkers of America, Local No. 286,
253 F.3d 1093 (8th Cir. 2001) 6

Heistand v. Heistand,
267 Neb. 300 (2004) 33

In re Bellanca Aircraft Corp.,
850 F.2d 1275 (8th Cir. 1988) 6

In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation, Memorandum and Opinion Order,
File No. E-97-003 ..... 20, 21, 22, 31, 32, 35

Kaiser v. Western R/C Flyers, Inc.,
239 Neb. 624 (1991) 33

Kresha v. Kresha,
216 Neb. 377, 344 N.W.2d 906 (1984) 33

National Association of Regulatory Utility Commissioners v. FCC,
525 F.2d 630 (1976) 13, 14, 15, 16, 17

Pacific Bell v. Cook Telecom, Inc.,
197 F.3d 1236 (9th Cir. 1999) 3, 4

Sports Courts of Omaha, Ltd. v. Brower,
248 Neb. 272 (1995) 33

Thielen & Thielen,
254 Neb. 697 (1998) 33

United States v. Talley,
16 F.3d 972 (8th Cir. 1994) 6

United States Telecom Association v. FCC
295 F.3d 1326 (D.C. Cir.2002) 15

Virgin Islands Telephone Corporation v FCC,
198 F.3d 921 (D.C. Cir. 1999) 12, 13

STATUTES

47 U.S.C. §153 11

TABLE OF AUTHORITIES

Page

47 U.S.C. § 153(43) 4

47 U.S.C. §153(44) 11

47 U.S.C. § 153(46) 4

47 U.S.C. § 251(a)(1) 11

47 U.S.C. § 252 4

47 U.S.C. § 253(a) 4

47 U.S.C. § 254(b)(3) 4

Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) 1

OTHER AUTHORITIES

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, ¶1045 (1996) 20, 21, 24, 25, 28, 29

POST-HEARING BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. ("Sprint") respectfully submits its brief on Issue Nos. 1 and 2 in this proceeding, as a supplement to the arguments presented in its Petition for Arbitration dated May 20, 2005 (the "Petition"), and incorporates those arguments herein.

I. INTRODUCTION AND SUMMARY OF SPRINT'S POSITION

The issues before this Commission come down to whether Congress intended in establishing carrier interconnection obligations to expand the voice service options for rural telephone subscribers or instead intended to preserve local monopolies in such service.

When it enacted the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 *et seq.*) ("Act"), Congress delegated to this and other state commissions the duty to enforce the interconnection obligations set forth in the Act, subject to federal court review. In doing so, Congress did two things that make plain its intent, as applied to the issues here. First, it made clear that it was passing the Act to open up monopolized markets to competition. Second, mindful that it could not foresee all the innovative arrangements that free competition might unleash, Congress stated the interconnection duty in language that was both broad and flexible enough to accommodate new business models that were unheard of when the Act was passed.

Thus, the Act provides that all telecommunications carriers have a duty to connect "directly or indirectly" with other carriers. The Act defines "telecommunications carrier" as "*any*" provider of telecommunications services. And it defines "telecommunication services" as the offering of telecommunications for a fee directly to the public "*or* to such classes of users as to be *effectively* available directly to the public, regardless of the facilities used."

This language plainly encompasses Sprint's offering in Nebraska. Sprint is working with a cable company to provide voice service to the public. Sprint will provide switching, public switched telephone network ("PSTN") interconnection, numbering resources, administration and

porting, domestic and international toll service, operator and directory assistance, and numerous back-office functions, and Sprint's systems will track and pay reciprocal compensation.[1] This is a "telecommunications" offering that is "effectively available directly to the public."

SENTCO seeks to avoid this conclusion with arguments that are irreconcilable with the language of the Act, its purpose, or even simple logic. Its lead argument is that it only has a duty to negotiate interconnection with those entities that have a direct customer relationship with residential subscribers—in this case, Time Warner Cable ("TWC"). The Act's language defeats that claim because it defines telecommunications services as the offering of telecommunications "directly to the public *or* to such classes of users *as to be effectively available* directly to the public." Because the Act is not restricted to offerings made directly to the public, it does not embrace SENTCO's retail/wholesale distinction. Moreover, the broad and flexible term Congress chose to capture indirect offerings—"effectively available directly to the public"—accomplishes Congress's pro-competitive purpose by permitting innovative new arrangements, like the business model here, that expand the public's service options, and must be read consistently with the command in §251(a) that all carriers be permitted to interconnect "directly" or "indirectly." Beyond this, SENTCO's argument is simply illogical because the interconnection obligation consists of the physical act of linking networks, and here, it is Sprint's network, not TWC's network, that will physically interconnect with SENTCO, as SENTCO's witness admitted at the hearing on this proceeding.[2]

When SENTCO's contentions are examined against the applicable law and facts, it is apparent that it has contrived arguments to delay or obstruct competition. The Commission should not endorse this tactic. SENTCO has asserted no technical problem or other legitimate business reason to thwart Sprint's business model with TWC, and as SENTCO's own witness admitted, its engineers and consultants have not identified a single potential issue with the

---

[1] Pre-filed Direct Testimony of James R. Burt (hereinafter, "Burt Testimony"), p. 21:480-493.

[2] Hearing Transcript dated August 10, 2005 (hereinafter, "Hearing Transcript"), p. 120:4-10.

equipment or facilities that Sprint seeks to interconnect with SENTCO.[3] The Commission has supported competition in Lincoln and Omaha. There is no reason to deny the same benefits to the residents of Falls City.

It should instead join the other state commissions who have addressed this business model, and who uniformly (those whose decisions are final) have imposed a duty to interconnect.

II. ARGUMENT

A. To Promote Competition, Congress Broadly Required Interconnection In The Telecommunications Act Of 1996

"The Telecommunications Act of 1996 [citation] is designed to foster competition in local telecommunications markets." *Pacific Bell v. Cook Telecom, Inc.*, 197 F.3d 1236, 1237 (9th Cir. 1999). Section 251 of the Act establishes a three-tier system of interconnection obligations. Section 251(a) obligates each telecommunications carrier "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(b) requires "local exchange carriers" to, among other things, "establish reciprocal compensation for the transport and termination of telecommunications." Finally, section 251(c) imposes additional obligations on "incumbent local exchange carriers."

Section 153(44) broadly defines a "telecommunications carrier" as "*any* provider of telecommunications services." Section 153(46) in turn defines "telecommunications services" in equally broad terms as "the offering of telecommunications for a fee directly to the public, *or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.*"[4] And, "'Telecommunications' means the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[5]

---

[3] Hearing Transcript, p. 126:1-13.

[4] 47 U.S.C. § 153(46) (emphasis added).

[5] 47 U.S.C. § 153(43).

In Section 252, Congress took steps to ensure that these interconnection obligations were enforced. It enabled any carrier that is stymied in its efforts to obtain interconnection to petition a state commission to arbitrate an interconnection agreement and provided for federal court review to determine whether the commission's decision complies with the Act.[6]

Sections 251 and 252 are, "[t]he key provisions by which Congress sought to open local telecommunications markets to competition." *Pacific Bell*, 197 F.3d at 1237. Several other provisions also declare Congress's procompetitive purpose. These include Section 253, which prohibits states or local governments from promulgating rules that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service"[7] and section 254, which declares the goal that quality service and access be available to all consumers, "including. . . those in rural, insular and high cost areas. . . at rates that are reasonably comparable to rates charged for similar service in urban areas."[8]

B. The Rural Exemption Is Not Implicated In This Proceeding.

Before we take up the issues properly before the Commission, we head off one potential red herring that is not at issue. Section 251(f)(1)(A) of the Act provides as follows:

> 1) Exemption for Certain Rural Telephone Companies.
>
> (A) Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

By its terms, the rural exemption under §251(f)(1) is limited to obligations under §251(c), including interconnection obligations under §251(c)(2).[9] Nothing in §251(f)(1) mitigates an

---

[6] 47 U.S.C. § 252

[7] 47 U.S.C. §253(a).

[8] 47 U.S.C. § 254(b)(3).

[9] Section 251(c)(2) provides, in pertinent part, that each incumbent local exchange carrier has the duty to "provide,"

Continued on following page

ILEC's obligation to interconnect with other telecommunications carriers under §251(a), or to enter into reciprocal compensation arrangements under §251(b)(5).

Sprint seeks interconnection with SENTCO under §251(a), not §251(c)(2).[10] In fact, SENTCO has admitted in its own pleadings that §251(c)(2) interconnection is not at issue in this case, noting that "*[m]oreover, this proceeding does not address any Section 251(c) issue.*"[11] Accordingly, the rural exemption under §251(f)(1) is not implicated in any way. Furthermore, SENTCO has not filed a petition for "modification" or "suspension" pursuant to §251(f)(2), which applies to local exchange carriers with fewer than two percent of the nation's subscriber lines. In opposition to Sprint's request for interconnection, SENTCO has never raised any issues regarding significant adverse economic impacts of this business model, and did not present any testimony from any witness on such issues.

C. Arbitration Issue No. 1 - The Definition Of "End User" Or "End User Customer" Should Include End Users Of Service Providers For Whom Sprint Provides Interconnection And Other Telecommunications Services Under the Agreement (Section 1.6 and as applied elsewhere in the Agreement)

SENTCO argues that the definition of "End User or End User Customer" should exclude TWC's subscribers because TWC, not Sprint, will provide the billing, customer service, sales, and installation functions to TWC's subscribers. This boils down to the assertion that the Act

---

Continued from previous page

for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network, at any technically feasible point within the carrier's network."

[10] Section 251(a) does not limit the type of traffic that may be exchanged, and it establishes an independent basis for a telecommunications carrier to interconnect with another telecommunications carrier for the mutual exchange of local traffic. On the other hand, §251(c)(2) of the Act imposes duties only on incumbent local exchange carriers and is triggered only upon the request of another carrier. As a result, §251(c)(2) of the Act is not the exclusive means by which parties may interconnect to exchange local traffic, as The Tenth Circuit Court of Appeals recently confirmed in the case of *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256 (2005).

[11] Motion to Dismiss or, in the Alternative, Response of Southeast Nebraska Telephone Company to Petition for Arbitration ("Motion to Dismiss"), footnote 3 (emphasis added).

only requires interconnection between those carriers that provide retail services directly to customers. The plain language of the Act is to the contrary.

1. Sprint Has A Right To Interconnect With SENTCO Because Sprint Is Offering Telephone Exchange Service And Exchange Access In A Manner That Renders The Service "Effectively Available To The Public".

The "starting point in interpreting a statute is always the language of the statute itself." *Dowd v. United Steelworkers of America, Local No. 286*, 253 F.3d 1093, 1099 (8th Cir. 2001). The adjudicator should "give effect, if possible, to every clause and word of a statute." *United States v. Talley*, 16 F.3d 972, 976 (8th Cir. 1994). Therefore, "a statute should not be interpreted so as to render the legislature's language superfluous." *In re Bellanca Aircraft Corp.*, 850 F.2d 1275, 1280 (8th Cir. 1988). And, the statute "should be construed to effectuate the underlying purposes of the law." *Dowd*, 253 F.3d at 1099.

Here, although Congress could have limited the definition of telecommunications carriers who are entitled to interconnect to those who provide telecommunications "directly to the public," it chose a broader definition that includes any entity that provides telecommunications "directly to the public, *or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.*" The italicized phrase refutes SENTCO's proposed retail/wholesale distinction. That distinction erroneously focuses on only the first half of the definition of a telecommunications carrier and renders the italicized language superfluous. *Cf. Bellanca*, 850 F.2d at 1289 (where statute allowed setoffs of payment given "to or for the benefit of debtor," it could not be interpreted to include only payments made directly to debtor because that interpretation rendered the phrase "for the benefit of" superfluous).

Although SENTCO ignores the latter half of the definition of a telecommunications carrier, Sprint easily qualifies upon application of that language to the facts here. As Mr. Burt testified, Sprint will be providing to TWC, among other things, PSTN interconnection, switching, number assignment, administration, and porting, operator services, directory assistance and directory assistance call completion, 911 circuits and 911 database

administration.[12] In effect, Sprint will be offering "telephone exchange service," as that term is defined in §153(47) of the Act:

> Telephone Exchange Service – The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) *comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.* (emphasis added)

In addition, Sprint clearly will be offering "exchange access," as that term is defined in §153(16) of the Act:

> Exchange Access – The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.[13]

The essential services Sprint proposes to provide to TWC will make it possible for TWC's subscribers to place and receive telephone calls, not only to SENTCO's customers, but to customers of any telecommunications carrier whose network is connected directly or indirectly to SENTCO's. Without the services Sprint proposes to provide to TWC, TWC's subscribers could not place or receive any telephone calls that would require access to or from the PSTN. Sprint's switch performs all switching and routing functions for local, domestic, and foreign toll, emergency, operator assisted, and director assistance calls.[14] As a result, Sprint is providing telephone exchange service and exchange access service, and it is doing so in a manner that makes those services "effectively available to the public." Accordingly, under the plain language of the Act, Sprint is a telecommunications carrier.[15]

---

[12] Burt Testimony, p. 21: 480-493.

[13] The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service. §153(48).

[14] Burt Testimony, pp. 19-21:446-458.

[15] Moreover, Section 153(26) of the Act defines "local exchange carrier" as any person that is engaged in the

Continued on following page

This conclusion not only follows the statutory language but also its purpose. The Act seeks to promote competition by requiring telecommunications providers to make their networks available to other competitive providers. Because the business model at issue here is a new offering that did not even exist at the time Congress passed the 1996 Act, Congress naturally did not discuss the model explicitly. But when the Act's purposes are considered along with the broad and flexible language Congress chose to implement that purpose, there should be no doubt that Congress would have intended the model to qualify for interconnection. SENTCO's interpretation, by contrast, applies a rigid and inflexible definition of "telecommunications carrier" that would thwart Congress's procompetitive purpose. Worse still, SENTCO's restrictive definition would hamper most acutely the very new and innovative arrangements that Congress sought to foster when it created interconnection obligations.

SENTCO's witness, Elizabeth Sickel, testified that "Sprint is not the telecommunications carrier providing telecommunications services in the context of the issue before the Commission."[16] In fact, Ms. Sickel's "summary" of her testimony reads like a legal brief, drawing numerous legal conclusions, including the purported legal conclusion that Sprint is not a telecommunications carrier.[17] However, Ms. Sickel failed to back up her legal conclusions with any supporting facts. Clearly Ms. Sickel has no personal knowledge of the relevant facts underlying the dispute in this case. In fact, Ms. Sickel deferred to SENTCO's purported "expert" witness, Steven Watkins, when questioned on such matters as the switching of traffic and the meaning of direct interconnection.[18] Ms. Sickel also admitted that she has very limited experience in technical network matters, and that she relies upon other parties, including Mr.

Continued from previous page

provision of telephone exchange service or exchange access. Clearly, one cannot be a local exchange carrier unless telephone exchange service and/or exchange access are considered telecommunications services.

[16] Hearing Transcript, p. 108:6-8.

[17] Hearing Transcript, p. 104-111.

[18] Hearing Transcript, p. 118:19-21, p. 120:14-17.

Watkins, for technical advice.[19] In addition, Ms. Sickel testified that TWC is the "proper" party to the interconnection agreement solely on the basis that TWC is the party competing with SENTCO for end users.[20] However, Ms. Sickel failed to testify to a single fact or specific reason why SENTCO is harmed if the company competing for end users is not the party to the interconnection agreement.[21] The lack of substance to support SENTCO's allegations simply demonstrates SENTCO's true motive in this proceeding – to delay the entry of competition into SENTCO's market.

2. Final Opinions From The State Commissions To Have Considered Identical Issues Have Unanimously Held That Service Providers Requesting Interconnection Under Similar Business Models Are Telecommunications Carriers And Are Entitled To Interconnection Under The Act.

Several state commissions have addressed the same issue. *All* that have reached a final decision have come out the same way: under the business model at issue here, Sprint is a telecommunications carrier under the Act.

Specifically, the Illinois Commerce Commission, the New York Public Service Commission, and the Public Utility Commission of Ohio have all held that a service provider that provides PSTN interconnection and other similar services to cable companies is entitled to interconnection with rural LECs. True and correct copies of the Illinois, New York, and Ohio orders are attached hereto as Exhibits 1, 2, and 3, respectively.

In Illinois, Sprint filed a petition for arbitration seeking interconnection with several rural LECs in order to provide essential services in conjunction with MCC Telephony of Illinois ("MCC")'s offering of competitive local voice service in the rural LECs' territory. The business model at issue in Illinois is virtually identical to the one here. Just as SENTCO is now arguing,

[19] Hearing Transcript, p. 121:3-14.

[20] Hearing Transcript, p. 110:3-4; p. 117:5-8.

[21] Hearing Transcript, pp. 117-119.

the rural LECs in the Illinois case argued that they had no duty to interconnect with Sprint. The Illinois Commerce Commission ("ICC") firmly rejected the rural LECs' argument, holding that Sprint was a telecommunications carrier, as follows:

> The Commission finds that Sprint is a common carrier/telecommunications carrier. While Sprint does not offer its services directly to the public, it does indiscriminately offer its services to a class of users so as to be effectively available to the public, meaning it provides services to those capable of providing their own "last mile" facilities.[22]

The ICC recognized the distinction between "directly to the public" and "effectively available directly to the public," the critical point that SENTCO ignores.

The New York Public Service Commission ("NYPSC") has also held that Sprint is a telecommunications carrier under these circumstances. In its Order Resolving Arbitration Issues, the NYPSC ruled that the term "end users" as used in the interconnection agreement should include TWC's subscribers, and therefore Sprint was entitled to interconnection under §251(a):

> Sprint's agreement to provide Time Warner Cable with interconnection, number portability order submission, intercarrier compensation for local and toll traffic, E911 connectivity, and directory assistance, for Time Warner to offer customers digital phone service, meets the definition of "telecommunications services." Sprint's arrangement with Time Warner enables it to provide service directly to the public. . . . Sprint meets the definition of 'telecommunications carier" and, therefore, is entitled to interconnect with the independents pursuant to §251(a).[23]

Finally, the Public Utility Commission of Ohio ("PUCO") rejected the same arguments SENTCO makes in this case.[24] In the PUCO case, similarly situated small rural LECs sought exemptions under Section 251(f)(1) and (2) of the Act when confronted with an arrangement between MCIMetro Access Transmission Services, LCC ("MCI"), Intermedia Communications, Inc., and Time Warner Cable Information Services (Ohio), LLC, similar to the arrangement between Sprint and TWC. The PUCO denied rehearing on the issue of whether MCI was

---

[22] Exhibit 1 at p. 12.

[23] Exhibit 2 at p. 5.

[24] Exhibit 3.

providing telecommunications service, holding that MCI was entitled to interconnect with the rural LEC:

> The Commission denies rehearing on Applicants' fifth assignment of error. The Commission agrees with Applicants that 47 U.S.C. § 251(a)(1) and (c)(2) require Applicants to interconnect with other "telecommunications carriers" and that 47 U.S.C. §153(44) defines a "telecommunications carrier" as "any provider of telecommunications services." The Commission also observes, as do Applicants, that the 47 U.S.C. §153 definition of "telecommunications service" is "the offering of telecommunications for a fee directly to the public, or to classes of users as to be effectively available to the public, regardless of the facilities used." Applying this definition to MCI and its BFR, the Commission notes that MCI will doubtless collect a fee for providing telecommunications via interconnection with Applicants. Further, MCI's arrangements with Time Warner will make the interconnection and services that MCI negotiates with Applicants "effectively available to the public, regardless of the facilities used."[25]

Like MCI, Sprint will be providing interconnection, for a fee, to access the PSTN. Accordingly, SENTCO has a duty to interconnect with Sprint and to fulfill its obligations under Section 251(b) of the Act.

3. The Iowa Utilities Board Currently Is Reconsidering The Only State Commission Decision Arguably Adverse To Sprint's Position.

To Sprint's knowledge, the only arguably adverse state commission ruling is that of the Iowa Utilities Board ("IUB") in its May 26, 2005 Order in Docket No. ARB-05-02. However, that order does not help SENTCO for two reasons. First, the IUB is still considering the issue. After the IUB entered its May 26, 2005 Order, Sprint challenged it in federal court, Case No. 4:05-CV-354, United States District Court for the Southern District of Iowa (Central Division). After Sprint filed the federal action, the IUB voluntarily agreed to reconsider its decision, the federal court remanded the matter to the IUB for reconsideration proceedings, and the IUB has taken up the matter on reconsideration. On August 19, 2005, the IUB issued its Order Reopening Docket for Reconsideration and Setting Procedural Schedule in Docket No. ARB-05-2. A copy of the IUB's Order Reopening Docket is attached as Exhibit 4.

Second, and perhaps most importantly, the IUB *rejected* SENTCO's lead argument—that

[25] Exhibit 3 at p.13, ¶15.

the Act only allows "retail" providers to interconnection, and ruled against Sprint based only upon a factual misunderstanding of the nature of Sprint's offering. The IUB expressly stated in its May 26, 2005 order that "[t]he Board agrees that the FCC and the Virgin Islands Court did *not* adopt a wholesale/retail distinction in interpreting the language of the statute."[26] In its Order Reopening Docket, the IUB recognized that "Sprint may have evidence and argument that was not previously presented to the Board that could be relevant to the Board's May 26, 2005 decision." *See* Ex. 4 at p. 3. It was that misunderstanding that prompted the IUB to reconsider its order.

The upshot is that, thus far, *every* commission that has reached a final decision has agreed with Sprint and rejected SENTCO's position here. This Commission should do the same.

4. SENTCO's Reliance On The *Virgin Islands Telephone* Case Is Misplaced.

SENTCO relies on the 1999 decision in *Virgin Islands Telephone Corporation v FCC*,[27] arguing that Sprint is not offering telecommunications directly to the public. However, *Virgin Islands Telephone* does not help SENTCO.

In *Virgin Islands Telephone*, the FCC granted AT&T-SSI cable landing rights as a noncommon carrier. Virgin Islands Telephone Corporation appealed the decision to the D.C. Circuit Court of Appeals, arguing that the FCC misapplied the 1996 Act when it found that AT&T-SSI need not be regulated as a common carrier under the Act.[28] Although Virgin Islands Telephone Corporation maintained that the 1996 Act had substantially altered the definition of common carrier, the FCC applied the definition of "common carrier" set forth in *National Association of Regulatory Utility Commissioners v. FCC*[29] ("NARUC I") and concluded that

---

[26] *Order Granting Motion to Dismiss*, Docket No. ARB-05-2, issued May 26, 2005, p. 13 (emphasis added).

[27] 198 F.3d 921 (D.C. Cir. 1999) (hereinafter, "*Virgin Islands Telephone*").

[28] *Id.* at 922.

[29] 525 F.2d 630 (1976) ("NARUC I"). This case predates the adoption of the Act.

ATT-SSI was a private carrier for purposes of its cable landing operations.

The D. C. Circuit emphasized that it was required to defer to the FCC unless its interpretation of common carrier was unreasonable. In holding that the FCC acted within its broad discretion in applying the NARUC I test, the D.C. Circuit did not explain how the NARUC I test fit the language in the Act that defines telecommunications carrier as an entity that offers "telecommunications for a fee directly to the public, *or to such classes of users as to be effectively available directly to the public, regardless of the facilities used,"* particularly the second prong of the definition. The Court did note, however, that the FCC's consideration of "whether a service is effectively available directly to the public depends on the type, nature, and scope of users for whom the service is intended and whether it is available to 'a significantly restricted class of users.'"[30] The FCC found that AT&T-SSI was not offering its service to the general public because it:

> will make available bulk capacity in its system to a significantly restricted class of users, including common carrier cable consortia, common carriers, and large businesses. Potential users are further limited because only consortia, common carriers, and large businesses with capacity in interconnecting cables or other facilities and, in many cases, operating agreements with foreign operators, will be able to make use of the cable as a practical matter.[31]

Importantly, however, the *Virgin Islands Telephone* Court declined to rest its decision on any retail/wholesale distinction:

> [t]he term 'telecommunications service' was not intended to create a retail/wholesale distinction . . . neither the Commission nor the courts . . . (have construed) 'the public' as limited to end-users of a service . . . the Commission never relied on a wholesale-retail distinction; the focus of its analysis is on whether AT&T-SSI offered its services indiscriminately in a way that made it a common carrier . . . and *the fact that AT&T-SSI could be characterized as a wholesaler was never dispositive.*[32]

---

[30] *Virgin Islands Telephone* at 924.

[31] *Id.*

[32] *Id.* at 929 (emphasis added).

Thus, far from helping SENTCO, *Virgin Islands Telephone* expressly rejects the primary argument on which SENTCO's case rests. Furthermore, there are key differences between the submarine cable service that AT&T-SSI offered in *Virgin Islands Telephone*, and the telecommunications services Sprint proposes to offer with TWC. AT&T-SSI's offering involved the provisioning of a submarine cable – a simple conduit. The *Virgin Islands Telephone* case did not address how the submarine cable would interconnect with local carriers for the purpose of exchanging traffic to and from the PSTN.

In contrast, Sprint is not simply selling bulk capacity, but instead will be solely responsible for all of the elements of interconnection. These elements include, among other things, the routing of calls, provisioning of interconnection trunks with SENTCO, and provisioning of telephone numbers. Sprint will provide both the conduit and the switching and routing functions. In holding that Sprint was a telecommunications carrier under a business model identical to that at issue here, the Illinois Commerce Commission recognized the distinction between Sprint's services and AT&T-SSI's services in *Virgin Islands Telephone*:

> The Commission also notes that we previously analyzed the *Virgin Islands* decision in *SCC* and found *Virgin Islands* to be factually dissimilar. In *SCC*, the Commission stated AT&T-SSI failed to meet either prong of the NARUC I test, as its main service was to "provide hardware, lay cable and lease space to cable consortia, common carriers and large businesses with the capacity to interconnect to its proposed cable on an individualized basis." *SCC* at 8. Essentially, SCC was providing bulk capacity. We believe this distinction is relevant to this proceeding as well. ***Here, Sprint is not offering bulk capacity. It is offering a host of technical functions, including 9-1-1 provisioning services, to any entity that provides its own "last mile" facilities.***[33]

Accordingly, Sprint's business model is different from the arrangement at issue in the *Virgin Islands Telephone* case. Given those differences, *Virgin Islands Telephone* is of limited utility. Indeed, as noted, the D.C. Circuit did not analyze the key statutory language at issue here, "effectively available directly to the public," but instead simply deferred to the FCC's choice to apply the NARUC I test without ever explaining how that test satisfied the statutory

[33] Exhibit 1 at p. 13.

language. While such deference may have been appropriate on the particular facts presented in *Virgin Islands Telephone*, the facts here are markedly different and the FCC has never indicated that NARUC I test should apply in the factual context here.

In any event, as we now explain, although the NARUC I test is of doubtful applicability, Sprint satisfies that test.

5. Sprint Satisfies The NARUC I Test.

While emphasizing the D.C. Circuit's analysis of the NARUC I test in the 1999 *Virgin Islands Telephone* case, SENTCO ignores that in its 2002 *USTA* decision, the D.C. Circuit explained the application of NARUC I to make clear that Sprint satisfies that test on the facts here. As articulated by the D.C. Circuit in *United States Telecom Association v. FCC*[34] (*"USTA"*), common carrier status under the two-prong test established in *NARUC I* "turns on:

- whether the carrier holds 'himself out to serve indifferently all potential users'; and,
- whether the carrier allows the customers to transmit intelligence of their own design and choosing."[35]

USTA involved a state telecommunications network in Iowa that had applied for Universal Service support under Section 254 of the Act. The D.C. Circuit examined whether a restricted audience for a carrier's service would exclude that carrier from common carrier or telecommunications carrier status. The United States Telecom Association argued:

> because Iowa law greatly restricts the universe of the network's authorized users, ICN fails to satisfy the first prong of the common carrier test: that the carrier hold itself out to serve indifferently "all potential users." . . . [and that] a carrier cannot satisfy this prong unless it holds itself out to "the public." *See NARUC I, 525 F.2d at 640.* And ICN's "class of legally authorized users," USTA maintains, "is not broad enough to be considered a portion of 'the public.'"[36]

The FCC had held that Iowa's state Communications Network ("ICN") was a

---

[34] 295 F.3d 1326 (D.C. Cir.2002).

[35] *USTA* at 1329.

[36] *Id.* at 1332.

telecommunications carrier based on the *NARUC I* two-prong test. The Court agreed with the FCC, noting that "*NARUC I* can be read as approving the general rule that a carrier offering its services only to a legally defined class of users may still be a common carrier if it holds itself out indiscriminately to serve all within that class."[37] The key factor "is that the operator offer indiscriminate service to whatever public its service may legally and practically be of use."[38]

USTA also examined the second prong of the *NARUC I* test for common carrier status—"whether the carrier allows the customers to transmit intelligence of their own design and choosing."[39] This prong essentially mirrors the definition of "telecommunications" in the Act.[40] The Court stated that this prong of the test is intended to confine common carrier status to operators that do not regulate the content of their customers' communications.[41]

Sprint satisfies both prongs of the NARUC I test. It satisfies the first prong because Sprint will offer its services indifferently to all within the class of users consisting of TWC and all other entities who desire the services and who have comparable "last mile" facilities.[42] The Illinois Commerce Commission in its Order in Docket No. 05-0259 *et al* recognized that Sprint provides its services indiscriminately:

> In *SCC*, the Commission concluded that SCC, a 9-1-1 and emergency services provider, was a common carrier even though it provided its services directly to ILECs, CLECs, certain State agencies, wireless operators, emergency warning systems and emergency roadside assistance programs. The Commission reached this conclusion even though SCC did not directly serve the general public. The key was the fact that SCC made its services indiscriminately available to those who could use its services. SCC at 8. *In the instant docket, we conclude that*

[37] *Id.* at 1333.

[38] *Id.* at 1333.

[39] *Id.* at 1329.

[40] Section 153(43) of the Act defines "telecommunications" as the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received.

[41] *USTA* at 1335.

[42] Burt Testimony, p. 27:622-625.

Sprint also makes its services indiscriminately available to those who could use its services.[43]

If another cable company or similarly situated entity wants Sprint to provide services similar to those Sprint intends to provide to TWC, under similar terms, Sprint will do so.[44] In addition, should the Commission require Sprint to file a tariff for the service offering, Sprint will comply.[45] It should be noted, however, that while Sprint is willing to file a tariff should the Commission ever require Sprint to do so, Sprint has never been under any obligation to file a tariff with respect to the services it intends to provide to TWC. In fact, notwithstanding Ms. Sickel's attempt to mischaracterize Sprint's proposed services as a "private contract,"[46] Ms. Sickel herself admitted that the Commission has not ordered Sprint to file a tariff.[47]

Further, Sprint satisfies the second prong of the NARUC I test because Sprint will not alter the content of the voice communications by end users. In its Order in Docket No. 05-0259 *et al*, the Illinois Commerce Commission acknowledged that Sprint satisfied the second prong, noting that "Sprint also passes the second prong of the NARUC I test by not altering the content of voice communications by end users."[48] Accordingly, to the extent the NARUC I test has any bearing on the definition of a telecommunications carrier, Sprint satisfies that test.

6. It Is Sprint's Network, Not TWC's Network, That Will Be Physically Interconnecting With SENTCO's Network. Therefore Sprint Is Entitled To An Interconnection Agreement With SENTCO In Its Own Name.

In the hope of obscuring the fact that it seeks to block or delay competition by any argument available to it, SENTCO has argued that any interconnection agreement should be

---

[43] Exhibit 1 at pp. 12-13.

[44] Hearing Transcript, p. 58: 11-15.

[45] Burt Testimony, p.27:625-626.

[46] *See* Hearing Transcript, p. 107:14-15.

[47] Hearing Transcript, p. 126:14-23.

[48] Exhibit 1 at p. 12.

negotiated between it and TWC.[49]

Since the plain language of the Act entitles Sprint to interconnection, the Commission can and should cut through this shell game and reject SENTCO's argument out of hand without further ado. Nevertheless, there is one final point that illustrates both the absurdity of SENTCO's position and the fact that the position is a sheer contrivance to delay and obstruct: it is Sprint's network, not TWC's network, that will be physically interconnecting with SENTCO's network, as SENTCO's witness admitted at the hearing on this proceeding.[50]

The customer service, billing, sales, and installation functions that TWC will be providing have nothing to do with how SENTCO's and Sprint's networks will interact with each other to carry local telephone traffic to and from the PSTN. Because it is Sprint's network that will link up with SENTCO's network, it is entirely appropriate and sensible for Sprint, not TWC, to have an interconnection agreement with SENTCO. As Mr. Burt testified at the hearing, in response to a question from Commissioner Landis, it would be improper for any party other than Sprint to negotiate a contract purporting to govern how Sprint's network would interact with another party's network.[51] SENTCO's argument defies common sense and is not supported by any applicable legal analysis.

D. Arbitration Issue No. 2 - "Reciprocal Compensation" Should Include The Transportation And Termination On Each Carrier's Network For All Local Traffic, Including Traffic Originated And Terminated By Sprint For TWC End Users (Section 1.21 and as applied elsewhere in the Agreement).

SENTCO next argues, primarily through the testimony of its "expert" Steven Watkins,

---

[49] Of course, if TWC had first approached SENTCO to negotiate, there is little doubt that SENTCO would have disputed TWC's right to do so, arguing that it could only interconnect with the actual carrier with which it was linking physical facilities. But because Sprint initiated the process, SENTCO has adopted the tactic of urging the Commission to force the parties to start over with a TWC-SENTCO negotiation, which would inject substantial delay during which time SENTCO would continue to enjoy its monopoly and could reformulate a new line of attack to thwart any negotiation with TWC.

[50] Hearing Transcript, p. 120:4-10.

[51] Burt Testimony, pp. 93-94, p. 95:1-4.

that TWC's subscribers should be excluded from the calculation of reciprocal compensation in the proposed Agreement. SENTCO asserts that because TWC has the "last mile" facilities--analogized to a local loop in the testimony before the Commission--the traffic routed to and from the PSTN by Sprint's Class 5 end office switch originates and/or terminates on TWC's network and not on Sprint's network. SENTCO's argument is wrong for 6 reasons:

1) SENTCO concedes, as it must, that as a LEC, it has an independent obligation to establish reciprocal compensation arrangements with other telecommunications carriers;

2) SENTCO and its "expert" ignore FCC precedent establishing that loop costs (such as the "last mile" equipment maintained by TWC here) properly are not part of the reciprocal compensation calculation;

3) By including TWC's loop-like facilities that are excluded by the FCC, SENTCO wrongly disregards Mr. Burt's testimony that the traffic at issue originates and/or terminates on Sprint's network because Sprint's Class 5 switch sends all signals to route the traffic to and from the PSTN by the calling/called parties;

4) SENTCO's suggestion that the presence of a third carrier (*i.e.*, Sprint) in the local traffic flow destroys the right to reciprocal compensation has been soundly rejected by the only U.S. Court of Appeals to have considered the analogous question in the context of CMRS services;

5) SENTCO ignores that all indicators presently used in the telecommunications industry to identify end office switches demonstrates that it is Sprint's Class 5 switch and not the TWC "soft switch" that functions as the end office switch here; and

6) SENTCO's "expert" opinion is entitled to little or no weight because of indisputable bias and failure to consider relevant authorities and arguments presented in Sprint's testimony notwithstanding that Mr. Watkins' testimony was purportedly filed as "rebuttal" testimony.

Accordingly, the evidence before the Commission and the relevant legal authorities compel the conclusion that Sprint is entitled to receive and pay reciprocal compensation to SENTCO for local traffic delivered pursuant to the parties' Agreement.

1. <u>SENTCO Cannot Dispute That Section 251(b)(5) Imposes An Independent Obligation On LECs To Establish Reciprocal Compensation Arrangements With Other Telecommunications Carriers.</u>

SENTCO cannot seriously dispute that Section 251(b)(5) of the Act requires each local

exchange carrier to establish reciprocal compensation arrangements for the transport and termination of telecommunications. As the FCC has recognized, the duty to establish reciprocal compensation arrangements is independent of any interconnection obligations:

> Furthermore, among the subparts of this provision, section 251(b)(5) establishes a duty for all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." *Local exchange carriers, then, are subject to section 251(a)'s duty to interconnect and section 251(b)(5)'s duty to establish arrangements for the transport and termination of traffic...*[52] (Emphasis added.)

Even SENTCO's "expert" witness Mr. Watkins acknowledged in his "rebuttal" testimony that the FCC has concluded in the *Local Competition Order* that "pursuant to section 251(b)(5) of the Act, all local exchange carriers, *including small incumbent LECs* and small entities offering competitive local exchange services, have a duty to establish reciprocal compensation for the transport and termination of local exchange service."[53] Accordingly, all local exchange carriers--including rural telephone companies such as SENTCO--have a duty to establish reciprocal compensation for the transport and termination of local telecommunications traffic. While the term "interconnection" refers only to the physical linking of two networks for the mutual exchange of traffic, and does not include the transport and termination of traffic, this does not mean that incumbent LECs have no duty to route and terminate traffic. As the FCC noted, "[t]hat duty applies to all LECs and is clearly expressed in § 251(b)(5)."[54]

To the extent that SENTCO, like other rural telephone companies, asserts that the general requirement imposed on *all* carriers to interconnect "directly or indirectly" in Section 251(a) of

---

[52] See *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation, Memorandum and Opinion Order,* File No. E-97-003, FCC 01-84, released March 13, 2001 at ¶¶23-26.

[53] *See* Pre-Filed Rebuttal Testimony of Steven E. Watkins ("Watkins Testimony"), p. 21:9-12, *citing, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, ¶1045 (1996) (hereinafter, "*Local Competition Order*"). (Subsequent history omitted).

[54] *Local Competition Order* at ¶176.

the Act is somehow superseded by the more specific obligation imposed on *ILECs only* in Section 251(c)(2) to interconnect at technically feasible points, such an assertion was recently rejected by the Tenth Circuit in *Atlas Telephone Company, et al. v. Oklahoma Corporation Commission.*[55] In *Atlas Telephone*, a CMRS carrier sought an interconnection agreement and a reciprocal compensation arrangement with several RLECs in Oklahoma even though the CMRS carrier intended to interconnect with the RLECs only indirectly.[56] The CMRS carrier intended to use an IXC (Southwestern Bell Telephone Company or "SWBT") to interconnect with the RLECs.

Unlike Sprint in the present case, the IXC in *Atlas Telephone* was not providing interconnection and telecommunications services to the CMRS carrier, but was transporting local traffic to and from the RLECs and the CMRS carrier.[57] Although the factual scenario in *Atlas Telephone* was similar to the present case, SWBT did not seek an interconnection agreement with the RLECs and was not seeking to track, report, receive and pay reciprocal compensation. Nevertheless, like SENTCO here, the RLECs in *Atlas Telephone* attempted to argue that the requirements in Section 251(c) trump the general requirement to interconnect "directly or indirectly" set forth in Section 251(a) of the Act.

The court, however, rejected the RLECs' contentions, noting that it simply found "no support for this argument in the text of the statute or the FCC's treatment of the statutory provisions."[58] The court reasoned that the interconnection requirements set forth in Section 251(c)(2) extended only to incumbent LECs, and only when another carrier makes a specific request under that section of the Act.[59] Rejecting the RLECs' efforts to argue that

---

[55] *Atlas Telephone Co., et al. v. Oklahoma Corp. Comm'n, et al.*, 400 F3d 1256, 1265 (10th Cir. 2005).

[56] *Id.* at 1259-62.

[57] *Id.*

[58] *Id.* at 1265.

[59] *Id.*

interconnection with them was controlled solely by Section 251(c), the court stated:

> Yet, as noted above, the obligation under § 251(c)(2) applies only to the far more limited class of ILECs, as opposed to the obligation imposed on all telecommunications carriers under § 251(a). The RTCs' interpretation [of Section 25(c)(2)] would impose concomitant duties on both the ILEC and a *requesting* carrier. This contravenes the express terms of the statute, identifying ILECs as entities bearing additional burdens under § 251(c). We cannot conclude that such a provision, embracing only a limited class of obligees, can provide the governing framework for the exchange of local traffic.[60]

Moreover, the *Atlas Telephone* court concluded that the RLECs' assertion was contrary to the purposes of the Act. Although Section 251(c) interconnection is triggered only upon request by a requesting carrier, the court observed that the RLECs' assertion would make such interconnection obligatory to all carriers seeking to exchange local traffic. Noting, also, that at the same time the Act exempts rural telephone companies from application of Section 251(c) until action by state commissions to lift the rural exemption, the court concluded:

> If Congress had intended § 251(c)(2) to provide the sole governing means for the exchange of local traffic, it seems inconceivable that the drafters would have simultaneously incorporated a rural exemption functioning as a significant barrier to the advent of competition.[61]

Accordingly, as a LEC, SENTCO has an independent obligation under Section 251(b)(5) of the Act to establish reciprocal compensation arrangements with Sprint. SENTCO likewise cannot contend that because it is also an ILEC, its interconnection obligations with Sprint are controlled exclusively by Section 251(c)(2) to the detriment of its obligation to interconnect under Section 251(a) and provide reciprocal compensation under Section 251(b)(5). The undisputed evidence here, including the SENTCO's admissions in its Response to Sprint's Petition, proves that Sprint's request for interconnection was not made under Section 251(c) of the Act, but pursuant to Section 251(a) of the Act.[62] Section 251(c) does not and cannot control here, and SENTCO

---

[60] *Id.*

[61] *Id.* at 1265-66, *citing*, 47 U.S.C. § 251(f)(1)(A).

[62] *See* Sprint's Petition for Arbitration, Exhibit 1 to Hearing Transcript at pp. 8-10; *See also* SENTCO's Motion to Dismiss, p. 12, n. 3 "Sprint's reference to an FCC statement regarding Unbundled Network Elements ("UNEs") is misleading. UNEs are required to be offered by non-rural ILECs under Section 251(c), a section not applicable to SENTCO because it is a rural telephone company as defined under the Act [citations omitted]. *Moreover, this*

Continued on following page

must provide interconnection and reciprocal compensation arrangements.

2. Sprint Will Provide Transport And Termination Of Telecommunications Traffic Between TWC's Subscribers And The PSTN Which, For Reciprocal Compensation Purposes, Originates And Terminates On Sprint's Network.

None of the evidence produced by SENTCO at the hearing alters the fact that the local traffic at issue in this proceeding originates and terminates for reciprocal compensation purposes on Sprint's network, not TWC's network. Accordingly, SENTCO has an obligation to establish reciprocal compensation arrangements with Sprint to allow Sprint to pay and receive reciprocal compensation for traffic it routes to/from the PSTN from TWC end users and SENTCO end users.

Initially, the Commission should reject out of hand one of SENTCO's attempts at obfuscation. As part of its distortion in support of its erroneous assertion that TWC and not Sprint was providing the relevant end office switching, Mr. Watkins relied upon the example of a TWC-to-TWC call.[63] Thus, Mr. Watkins stated that when one TWC customer in Nebraska calls another TWC customer in Nebraska, "the call will be switched to the called party by Time Warner Cable, not Sprint."[64] However, as Sprint conclusively demonstrated at the hearing, this proceeding does not involve a "TWC-to-TWC call" because such as call is routed without regard to the PSTN and does not involve the interconnection services offered by Sprint.[65] Mr. Burt's testimony was uncontradicted that "[t]he calls that are relative to this proceeding are calls that go between Sprint's end office switch and in this case SENTCO's end office switch in Falls City, only those calls. That is the only purpose for seeking interconnection. The calls as described [in

---

Continued from previous page

proceeding does not address any Section 251(c) issue." (Emphasis added).

[63] Watkins Testimony, p. 17: 15-20.

[64] *Id.*

[65] Hearing Transcript, p. 66:17-25, pp. 67-68.

the TWC-to-TWC end users example] will not go over that network in any way. So they're irrelevant to this proceeding." *See* Hearing Transcript, p. 67:11-19. Therefore, Mr. Watkins' testimony and SENTCO's assertion is simply another diversion designed to obscure the fact that for reciprocal compensation purposes, the traffic originates and terminates on Sprint's network.

The credible evidence adduced in testimony and at the hearing instead establishes that the traffic at issue here originates and terminates on Sprint's network for reciprocal compensation purposes. Mr. Burt's prefiled direct testimony establishes that when viewed properly, the telephone calls that are routed to and from the PSTN originate and terminate on Sprint's network because it is Sprint's swtich that sends all relevant routing information to get the call to/from the intended parties. Mr. Burt testified repeatedly on cross-examination that the TWC facilities end at the CMTS, and that the facility between the CMTS and Sprint's Kansas City facility is "leased" from Southwestern Bell.[66] At page 41 of the Hearing Transcript, Mr. Burt testified in response to a question from SENTCO counsel that Sprint leases the facility to the left of the end office switch on his diagram (Exhibit 107 to the Hearing Transcript).

The significance of this fact, and the fatal flaw in SENTCO's analysis, is that it consistently and wrongly maintained that the traffic originated on TWC's network because TWC owned the "last mile" facility. However, although SENTCO's primary witness acknowledged in his "rebuttal" testimony that the *Local Competition Order* was particularly relevant to the reciprocal compensation issues, SENTCO ignored completely paragraph 1057 in the FCC's *Local Competition Order*, which provides:

> 1057. We find that, once a call has been delivered to the incumbent LEC end office serving the called party, the "additional cost" to the LEC of terminating a call that originates on a competing carrier's network primarily consists of the traffic-sensitive component of local switching. The network elements involved with the termination of traffic include the end-office switch and the local loop. *The costs of local loops and line ports associated with local switches do not vary in proportion to the number of calls terminated over these facilities (footnote omitted). We conclude that such non-traffic sensitive costs should not be considered "additional costs" when a LEC terminates a call that originated on*

[66] Hearing Transcript, pp. 37-41.

> *the network of a competing carrier.* For the purposes of setting rates under section 252(d)(2), only that portion of the forward-looking, economic cost of end-office switching that is recovered on a usage-sensitive basis constitutes an "additional cost" to be recovered through termination charges.[67] (Emph. added.)

Mr. Watkins ignored this provision and the assertion in direct testimony pre-filed by Mr. Burt, even though the expert testimony was filed after Mr. Burt's direct testimony and purportedly was in "rebuttal" to such testimony. Additionally, Mr. Watkins' testimony underscores that he fully participated in the 2004 Time Warner CLEC certification proceeding, which predated the present proceeding by nearly 10 months, filed testimony therein raising identical concerns to those expressed in this case, yet inexplicably failed to address the FCC's statement and Mr. Burt's *direct* testimony establishing that the TWC facilities here are roughly analogized to a loop (termed "loop-like" facilities in the Burt Testimony) and are excluded for reciprocal compensation purposes.

Because the TWC facilities are analogous to loops,[68] the costs of those loops do not vary in proposition to the number of calls handled on those facilities. The non-traffic sensitive costs are not considered "additional costs" and therefore only the costs of the end office switching are recovered on a usage sensitive basis as part of reciprocal compensation.[69] *See* Hearing Transcript at p. 81:1-11 where Mr. Burt testified that "[t]heir switch is not the termination point. Again, this issue gets back to reciprocal compensation and the definitions that surround that compensation between carriers. And the switching, the end office switching is one of those cost elements. *The Time Warner Cable switch is a part of the loop, and the loop is specifically not a part of the reciprocal compensation that a terminating carrier such as Sprint receives.*" (Emphasis added). Sprint, not TWC, will bear the traffic-sensitive costs associated with termination of calls. As described above, Sprint, not TWC, owns the switches and equipment through which all calls that touch the PSTN will be routed. As described above, TWC's "soft

[67] *Local Competition Order* at ¶1057.

[68] *See* Hearing Transcript, p. 81: 8-11.

[69] *Local Competition Order*, ¶ 1045.

switch" has no functionality to route calls to or from the PSTN apart from Sprint's end office switch. As a result, there are no traffic-sensitive costs borne by TWC associated with terminating telephone calls to TWC customers.

Sprint will also provide the transport and termination of telecommunications traffic between TWC's subscribers and the PSTN within the meaning of the FCC regulations. The credible testimony that should be given weight is that Sprint owns the end office switch that will switch the subscribers' voice calls, and its switch performs all switching and routing functions for local, domestic, and foreign toll, emergency, operator assisted, and directory assistance calls.[70] Every call to or from a TWC subscriber that touches the PSTN will pass through Sprint's switch.[71] Although Mr. Watkins purported to contest Mr. Burt's testimony that TWC's equipment currently will not switch traffic to or from the PSTN, and that TWC's "soft switch" essentially functions the same as a PBX, his analysis is flawed.[72]

As Mr. Burt testified, a PBX is a device that can route telephone calls internally to different lines within the same network; for example, extensions within an office building. However, a PBX is not capable of routing traffic to or from the PSTN.[73] Likewise, TWC's "soft switch" can transmit telephone calls from one TWC subscriber to another TWC subscriber, but it cannot route any calls to or from the PSTN. The TWC "soft switch" is connected to Sprint's end office switch;[74] it is not connected to the PSTN and has no functionality to route telephone calls to or from the PSTN apart from Sprint's end office switch. In short, TWC's subscribers need Sprint's end office switch in order to place and receive local telephone calls to and from SENTCO customers (or customers of any other local exchange carrier besides SENTCO, if there

[70] Burt Testimony, p. 19:446-448.

[71] *Id*.at p. 20: 449-450.

[72] Hearing Transcript, p. 87:17-19.

[73] *Id.* at p. 87:20-25.

[74] See Burt Testimony, Exhibit JRB-2.

were any in SENTCO's exchanges), toll calls to customers of interexchange carriers, 911 calls, operator assisted calls, and directory assistance calls.

Again, Mr. Watkins' suggestion that the TWC facility provides the relevant end office switching is not credible and should be accorded no weight. Although Mr. Burt unequivocally testified in his *direct* testimony that each of the factors evaluated in the telecommunications industry demonstrates that TWC's facility is not an end office switch, Mr. Watkins' "rebuttal" testimony remarkably failedto address these points.[75] However, as Mr. Burt explained in detail at the hearing, the Local Exchange Routing Guide ("LERG"), the CLLI Code, the local routing number, the LNP Query into the database and the 911 trunks are each factors that are relevant in the telecommunications industry for the purpose of defining whether a particular equipment is an end office switch.[76] In each case, Mr. Burt testified that the TWC "soft switch" does not possess these attributes, and that the Sprint Class 5 end office switch (depicted on the exhibits to Mr. Burt's direct testimony) does possess them. SENTCO's other witness, Ms. Sickel, failed completely to address these points in her pre-filed direct testimony (and did not address reciprocal compensation at all), and did not file any rebuttal testimony whatsoever.

SENTCO's analysis also ignores that Sprint provides "transport" and "termination" functions within the meaning of the FCC rules. SENTCO's narrow interpretation of those rules would inhibit the first true wireline local service alternative for consumers in SENTCO's territory. The FCC's discussion on this issue, however, reaches the opposite conclusion and supports the pro-competitive policy of Congress:

> 1039. We conclude that transport and termination should be treated as two distinct functions. We define "transport," for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party (or equivalent facility provided by a non-incumbent carrier). *Many alternative arrangements exist for the*

[75] *See* Burt Testimony, p. 19:446-48, p. 20:449-458; Pre-Filed Rebuttal Testimony of James R. Burt (hereinafter, "Burt Rebuttal Testimony"), p. 5:96-113, p. 6:114-15; Hearing Transcript, pp. 81-87.

[76] Hearing Transcript, pp. 81-87.

provision of transport between the two networks. These arrangements include: dedicated circuits provided either by the incumbent LEC, the other local service provider, separately by each, or jointly by both; facilities provided by alternative carriers; unbundled network elements provided by incumbent LECs; or similar network functions currently offered by incumbent LECs on a tariffed basis. Charges for transport subject to section 251(b)(5) should reflect the forward-looking cost of the particular provisioning method.[77] (Emphasis added.)

As the FCC acknowledged, many alternative transport arrangements exist. Sprint will provide the transport function precisely as defined above. As described above, Sprint (not TWC) provides the transmission from the interconnection point to the switch that directly serves the called party. TWC's "soft switch" is not an "equivalent facility" because it has no functionality to route calls to or from the PSTN apart from Sprint's end office switch.

Sprint also will provide "termination" precisely as the FCC has interpreted that term:

1040. We define "termination," for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises. . . .[78]

The credible testimony presented before and at the hearing demonstrates that when the "loop-like" equipment owned by TWC is properly excluded pursuant to the FCC's command in the *Local Competition Order*, it is clear that the Sprint switch originates and terminates traffic to and from the PSTN. Sprint provides the "termination" and "origination" within the meaning of the FCC's rules, and accordingly, Sprint satisfies the requirements for reciprocal compensation. The Agreement should thus include provisions confirming that reciprocal compensation applies to all local traffic exchanged between the Sprint and SENTCO networks for TWC end users.

3. SENTCO's Assertion That The Presence Of A Third Carrier In The Local Traffic Flow Eliminates The Right To Reciprocal Compensation Lacks Merit.

Mr. Watkins' suggestion that the presence of Sprint in the local traffic flow is somehow determinative of the reciprocal compensation issue is equally without merit and should be

[77] *Local Competition Order* at ¶1039.

[78] *Local Competition Order* at ¶1040.

accorded no weight here. In his testimony, Mr. Watkins asserts that novel "intermediary network providers" or "transit" carriers are neither originating nor terminating carriers and therefore the presence of these "third" carriers in the traditional local traffic flow eliminates any right to reciprocal compensation.[79] Mr. Watkins' argument assumes, wrongly, that Sprint is providing "transit" services. In contrast, the evidence in this proceeding establishes that Sprint is providing interconnection services and telecommunications to a class of users that will effectively allow the final product to be offered to the public.

Mr. Watkins' assertion, however, also proves too much. For this Commission to accept Mr. Watkins' proposition, it would have to conclude that when the FCC promulgated its reciprocal compensation rules in the *Local Competition Order* and the federal regulations that followed, it necessarily considered in 1996 *every* possible method of competition or business model that carriers might use, *including in the future*, to compete for local telecommunications subscribers. Such an interpretation is untenable, and belied by the fact the Congress established a scheme in the Act to eliminate local monopolies that was broad and flexible. In fact, Mr. Burt testified repeatedly in his pre-filed direct testimony that the Act allows for novel and flexible approaches to competition, and *no* SENTCO witness contradicted such testimony.[80] Yet, Mr. Watkins' testimony suggests that because the presence of a Sprint/TWC relationship (a cable provider with "last mile" facilities and a carrier providing interconnection services and telecommunications services so that the end product was effectively available to the public) did not exist at the time reciprocal compensation principles were adopted, Congress and the FCC meant to foreclose it. Such an assertion is nonsense.

In any event, the authority upon which Mr. Watkins relies to support his assertion is wholly distinguishable from the instant case. Although Mr. Watkins relies upon a FCC Order

---

[79] Watkins Testimony, p. 13:9-23, p. 14:1-3.

[80] Burt Testimony, pp. 10-15.

dealing with Verizon in Virginia[81] to support the assertion that the FCC reciprocal compensation rules do not contemplate "transit" carriers, he fails to inform this Commission that in the *Virginia Verizon Order*, the CLECs (AT&T and MCI) demanded that the ILEC (Verizon) actually provide transit services to them under the Act. Here, by contrast, neither Sprint nor any other carrier is demanding that SENTCO provide transit services. In fact, the Sprint/TWC model is readily distinguishable from the services discussed in the *Virginia Verizon Order*.

Part of the issue in the *Verizon Virginia Order* was the ILEC's insistence that it not bear the cost of transporting traffic all the way across the "transit" facilities to where the CLECs could establish a "meet point" to receive the traffic. Here, however, Mr. Burt testified (and Ms. Sickel did not dispute), that Sprint plans to interconnect *directly* with SENTCO at SENTCO's end office,[82] and therefore that the proposed arrangement is the cheapest alternative for SENTCO and the most expensive alternative for Sprint.[83] According to Mr. Burt's uncontradicted testimony, this arrangement means that SENTCO would *not* have to bear the responsibility for hauling traffic all the way to Sprint's switch in Kansas City. Sprint would instead bear that cost from SENTCO's end office to Kansas and back to Nebraska.[84] Such an arrangement is totally different from that involved in the *Virginia Verizon Order*. Additionally, although not discussed by Mr. Watkins, the very paragraph in the *Virginia Verizon Order* which he cites (para. 117) makes it clear that the CLECs' demand for "transit" services was made pursuant to Section 251(c)(2). As set forth above, even SENTCO concedes that this case raises no Section 251(c) issue.[85] Thus, Mr. Watkins' reliance upon the *Verizon Virginia Order* is misleading and misplaced.

---

[81] Watkins Testimony, p. 13, *citing*, *Memorandum Opinion and Order*, CC Docket Nos. 00-218, 00-249, and --0251, ¶ 117 (released July 17, 2002) (the "Verizon Virginia Order").

[82] Hearing Transcript, p. 33:9-18, p. 34:3-11.

[83] Hearing Transcript, p. 69: 8-25, p. 70:1-22.

[84] *Id.*

[85] *See* Footnote 62 above.

Lastly, in *Atlas Telephone*, the Tenth Circuit's recent decision in the analogous context of "local" services provided by a CMRS provider directly rejects the notion that the presence of a third carrier in the local traffic flow is determinative of an entity's entitlement to reciprocal compensation. In *Atlas Telephone*, the CMRS carriers sought interconnection and reciprocal compensation from RLECs like SENTCO, even though the CMRS carrier was "indirectly" interconnected with the RLECs though an IXC, and traffic was routed from the RLECs to the IXC (SWBT) and then to the CMRS provider.[86] As here, the RLECs in *Atlas Telephone* argued that the district court's ruling that reciprocal compensation applied to such a novel arrangement was contrary to the Act and the federal regulation and that they should have been compensated under the access regime due to the presence of the IXC carrier in the traffic flow.[87] Rejecting such an assertion, the court in *Atlas Telephone* concluded that the traditional access regime was not implicated because the FCC did not intend to apply it to LEC-CMRS traffic.[88] The court also rejected the RLECs' assertion that reciprocal compensation arrangements were designed only to be included in agreements under §251(c), and rejected the assertion that such an indirect interconnection arrangement would render the rural exemption "nugatory," stating that the "rural exemption remains available when the RTCs are confronted with requests for direct interconnection under §251(c)."[89]

Although the carrier in *Atlas Telephone* was a CMRS provider, the Tenth Circuit's decision nevertheless is instructive. First, pursuant to FCC precedent, the traffic in *Atlas Telephone* originated and terminated in the same Major Trading Area ("MTA") and is the functional equivalent of local traffic at issue here that originates and terminates in the same local

---

[86] *Atlas Telephone Co.*, 400 F.3d at 1260-62.

[87] *Id.* at 1260.

[88] *Id.* at 1266-67.

[89] *Id.* at 1267.

calling area.[90] Second, because the CMRS carrier was entitled to reciprocal compensation, regardless of the CMRS-wireline service distinction drawn by the Tenth Circuit, and regardless of the presence of SWBT in the middle of the local traffic flow, *Atlas Telephone* stands for the proposition that the mere presence of a third carrier does not determine whether the relevant carrier is entitled to reciprocal compensation.[91] The decision in *Atlas Telephone* demonstrates the fallacy of Mr. Watkins' assertion that simply because the factual scenario did not exist in 1996, the relevant statutory and regulatory provisions therefore prohibit it.

4. The State Commissions In Illinois And New York Expressly Recognized Sprint's Right to Reciprocal Compensation.

The state commissions in Illinois and New York expressly recognized Sprint's right to reciprocal compensation in similar proceedings. The ICC stated that "the Petitioners, as LECs, would be obligated to negotiate reciprocal compensation with Sprint if the rural exemption under §251(f)(2) is not applicable."[92] Further, the NYPSC ruled that Sprint was entitled to reciprocal compensation with the rural LECS as follows:

> We find unpersuasive the independents' claim that their §251(b) duties as local exchange carriers are not triggered because Sprint is not an ultimate provider of end user services. The provisions Sprint has offered in Section 2.4 of the proposed interconnection agreements are consistent with the §251 requirements and we find that they should prevail.[93]

The Illinois and New York state commissions recognized that the law and the relevant facts supported Sprint's position, and ruled accordingly. This Commission should do the same.

---

[90] SENTCO never seriously argued that the Sprint/TWC traffic should be treated as access traffic. Even if it had, SENTCO would not be able to show that under the FCC's end-to-end analysis, traffic originating and terminating in the same local calling area constituted interexchange traffic subject to access charges. The reciprocal compensation provisions in the Agreement only cover traffic that originates and terminates in the Falls City exchange.

[91] As discussed above, unlike the present case, the IXC in *Atlas Telephone* was not providing the various PSTN interconnection services that Sprint proposes to provide to TWC here. The IXC did not request interconnection arbitration with the RLECs, and did not seek to track, report, pay and receive reciprocal compensation.

[92] Exhibit 1 at p. 13.

[93] Exhibit 2 at p. 5.

5. The Testimony Of SENTCO's "Expert" Witness Is Entitled To Little Or No Weight.

Sprint has discussed above some of the reasons why Mr. Watkins' testimony is entitled to little or no weight in this proceeding. In addition to the reasons already discussed, and as Sprint briefed in its motion to strike before the hearing, the issues before the Commission are primarily questions of law involving the interpretation of a federal statute and federal regulations. Expert testimony is relevant and admissible only if it tends to help the trier of fact understand evidence or to determine a factual issue. It is well settled in Nebraska that expert testimony concerning a question of law does not accomplish this goal.[94] Mr. Watkins' testimony, which reads more like a legal brief than testimony, should be accorded little or no weight because he merely states opinions on questions of law and therefore invades the province of this Commission to determine in the first instance what the law and FCC regulations require.

Furthermore, the testimony itself and the Summary of Work Experience and Education attached as Attachment A establish that Mr. Watkins is a biased witness whose testimony should be disregarded. Under Nebraska law, considerable latitude is allowed in attempting to elicit and to establish bias, hostility or interest to a witness bearing upon his or her credibility.[95] Mr. Watkins' "rebuttal testimony" establishes that he is employed as a "Special Telecommunications Management Consultant" to the Washington, D.C. law firm of Kraskin, Moorman & Cosson, LLC--counsel of record for SENTCO in this proceeding.[96] The closeness of relationship between SENTCO's counsel of record and Mr. Watkins is also established by the fact that Mr. Watkins maintains an office in the very same suite of offices maintained by SENTCO's

---

[94] *See Sports Courts of Omaha, Ltd. v. Brower*, 248 Neb. 272 (1995); *Kaiser v. Western R/C Flyers, Inc.*, 239 Neb. 624, 628 (1991) (expert testimony concerning the status of the law does not accomplish the goals or requirements of Nebraska Evidence Rule 702 and generally is not admissible); *Thielen & Thielen*, 254 Neb. 697, 703 (1998); *Heistand v. Heistand*, 267 Neb. 300 (2004).

[95] *See Kresha v. Kresha*, 216 Neb. 377, 344 N.W.2d 906 (1984).

[96] Watkins Testimony, p. 1:1-9; Attachment A, p. 1.

counsel.[97] Although SENTCO asserted in opposition to the motion to strike that Mr. Watkins was not "employed" by the law firm, Mr. Watkins' own testimony talks about previous work experience as occurring prior to his "joining" Kraskin, Moorman & Cosson, LLC.[98]

Mr. Watkins also highlights his lack of impartiality and the fact that he is a "hired gun" of RLECs and small LECs when he states that his "entire 29-year career has been devoted to service to smaller, independent telecommunications firms that primarily serve the small -town and rural areas of the United States."[99] Prior to "joining" SENTCO's counsel of record, Mr. Watkins held a position at the NCTA in which he represented "several hundred small and rural local exchange carrier member companies . . . ."[100] Before working with NCTA, Mr. Watkins worked with a consulting firm "providing an array of management and analytical services to over 150 small local exchange carrier clients."[101] Nothing disclosed in Mr. Watkins' background suggests that he has ever represented a CLEC or other carrier adverse to an RLEC or small LEC or that he ever advocated a position contrary to that held by small LECs.

While such an obvious lack of impartiality might be expected for a company employee, it is significant in evaluating the broad legal conclusions offered by Mr. Watkins here which SENTCO attempts to cloak with added force because he is a so-called expert. Although Mr. Watkins had advance notice of the issues in this arbitration by virtue of his extensive participation in the Time Warner CLEC Certification hearing where he raised identical concerns, he failed to address key points made prominently in Mr. Burt's direct testimony. Mr. Watkins never cited or even attempted to distinguish the Tenth Circuit decision in *Atlas Telephone*. Importantly, in response to a question from Commissioner Landis, Mr. Watkins was forced to

[97] Watkins Testimony, p. 1:1-3.

[98] Watkins Testimony, Attachment A, pp.1-2.

[99] Watkins Testimony, Attachment A, p. 1.

[100] *Id.*, pp. 1-2.

[101] *Id.*, p. 2.

admit that he had not reviewed the recent Illinois Order adverse to SENTCO's position and was not prepared to discuss it.[102] When stripped away, it becomes evident that Mr. Watkins is merely an arm of counsel or record here, even though he is not an attorney, and his opinions are so tainted with bias and hostility as to be accorded little or no weight.

III. CONCLUSION

Congress established interconnection and reciprocal compensation obligations to expand the service options available to subscribers. SENTCO here seeks to deprive the rural residents of this state of the option of choosing an innovative new offering that subscribers enjoy across the country and in urban regions of this state. SENTCO should attempt to win those subscribers in the marketplace, rather than urging this Commission to turn the language and purpose of the Telecommunications Act on its head. The Commission should approve Sprint's proposed interconnection agreement and its reciprocal compensation arrangements.

[102] Hearing Transcript, p. 144:3-11; p. 146:14-16.

DATED this the 2nd day of September, 2005.

SPRINT COMMUNICATIONS COMPANY L.P.

By: _____
Diane C. Browning

Attorney – Law and External Affairs
6450 Sprint Parkway
KSOPHN0212-2A511
Overland Park, KS 66251
913-315-9284
913-523-0571 (fax)

And

REED SMITH LLP
Raymond A. Cardozo
Two Embarcadero Center, Suite 2000
San Francisco, CA 94111
(415) 543-8700
(415) 391-8269

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Cambridge Telephone Company	:	
C-R Telephone Company	:	
El Paso Telephone Company	:	
Geneseo Telephone Company	:	05-0259
Henry County Telephone Company	:	05-0260
Mid Century Telephone Cooperative, Inc.	:	05-0261
Reynolds Telephone Company	:	05-0262
Metamora Telephone Company	:	05-0263
Harrisonville Telephone Company	:	05-0264
Marseilles Telephone Company	:	05-0265
Viola Home Telephone Company	:	05-0270
	:	05-0275
Petitions for Declaratory Relief and/or	:	05-0277
Suspension or Modification Relating	:	05-0298
to Certain Duties under Sections	:	
251(b) and (c) of the Federal	:	(Cons.)
Telecommunications Act, pursuant to	:	
Section 251(f)(2) of that Act; and for	:	
any other necessary or appropriate	:	
relief.	:	

ORDER

By the Commission:

I. INTRODUCTION

From April 15, 2005 through May 4, 2005, Cambridge Telephone Company, C-R Telephone Company, El Paso Telephone Company, Geneseo Telephone Company, Henry County Telephone Company, Mid Century Telephone Cooperative, Reynolds Telephone Company, Metamora Telephone Company, Harrisonville Telephone Company, Marseilles Telephone Company, and Viola Home Telephone Company (collectively "Petitioners") each filed with the Illinois Commerce Commission ("Commission") a verified petition requesting extensive relief from certain obligations under the federal Telecommunications Act ("Federal Act"), 47 U.S.C. 151 et seq. Because the petitions are nearly identical, the dockets have been consolidated.

As an initial matter, Petitioners ask the Commission to promptly enter an interim order without hearing staying any obligation they have to negotiate reciprocal compensation or interconnection with Sprint Communications, L.P. d/b/a Sprint Communications Company L.P. ("Sprint") and staying any arbitration proceeding which may arise from Petitioners and Sprint's inability to agree on certain interconnection

matters until these proceedings have concluded. Thereafter, Petitioners seek a declaratory ruling by the Commission, pursuant to 83 Ill. Adm. Code 200.220, finding that they have no duty under Section 251(b)(2) and (5) of the Federal Act to negotiate reciprocal compensation or local number portability and no duty under Section 251(c) of the Federal Act to negotiate interconnection with an indirect transiting carrier or any carrier that does not intend to provide local exchange telecommunications service in their respective local serving areas. In response to an April 21, 2005 legal inquiry by the Administrative Law Judge ("ALJ"), Petitioners clarify the relief they seek by stating that if the Commission does not issue the initial declaratory ruling sought by Petitioners, the Commission should issue a declaratory ruling concluding that Petitioners are exempt from negotiating any terms of interconnection or reciprocal compensation by virtue of their rural exemptions under Section 251(f)(1) of the Federal Act.

If the Commission does not enter either of the declaratory rulings sought by Petitioners, they seek an order, pursuant to Section 251(f)(2) of the Federal Act, suspending or modifying their obligation to negotiate reciprocal compensation or local number portability under Section 251(b)(2) and (5) with an indirect transiting carrier that does not intend to provide local exchange telecommunications service in their respective local serving areas and has no ability to unambiguously identify the traffic it would terminate as "local" to Petitioners. Also pursuant to Section 251(f)(2) of the Federal Act, Petitioners seek a suspension or modification of their obligation to negotiate interconnection under Section 251(c) with a carrier seeking to force them to establish and support a point of interconnection outside of their respective local serving areas. In the event that they are not able to obtain the desired suspensions or modifications under Section 251(f)(2), Petitioners ask that the Commission identify the terms and conditions, including timeframes, under which they may have a duty to negotiate with Sprint.

Only Sprint filed a petition to intervene, which was granted by the ALJ. Commission Staff ("Staff") participated as well. The aforementioned April 21, 2005 inquiry from the ALJ also specified the date by which Staff and any intervener should respond to the declaratory ruling request. A deadline was also established by which Petitioners should reply to any response from Staff and any intervener. Sprint offered a response to the ALJ's April 21, 2005 inquiry as well as a response to the merits of Petitioners' declaratory ruling requests. Staff, however, only responded to the ALJ's inquiry and specifically declined to offer any opinion on the substance or merits of the petitions. Petitioners each filed a reply to the responses of Staff and Sprint.

Although Petitioners seek an interim order staying any obligation to negotiate with Sprint, the Commission believes that it can sufficiently address the issues raised by Petitioners in a timely manner with a single order. A Proposed Order was served on the parties. Sprint and Staff each filed a Brief on Exceptions, although Staff did not actually take exception to the Proposed Order. Instead, Staff simply suggested the addition of language indicating that the Commission's conclusions on these dockets are limited to the facts and circumstances of these dockets. Sprint, Staff, and Petitioners each filed a Brief in Reply to Exceptions. Petitioners have no objection to Staff's suggestion. The

Briefs on Exceptions and Briefs in Reply to Exceptions have been considered in the preparation of this Order. At the request of Sprint, the Commission also heard oral argument in these matters on June 9, 2005. In accordance with Section 200.220(h) of the Commission's rules, the Commission disposes of the requests for the declaratory rulings on the basis of the written submissions before it and the June 9, 2005 oral argument.

II. BACKGROUND

Petitioners are small facilities-based incumbent local exchange carriers ("LEC") providing local exchange services, as defined in Section 13-204 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., subject to the jurisdiction of the Commission. Cambridge Telephone Company provides service in the Cambridge and Osco exchanges. C-R Telephone Company serves the Cornell and Ransom exchanges. El Paso Telephone Company serves only the El Paso exchange. Geneseo Telephone Company provides service in the Geneseo and Green River exchanges. Henry County Telephone Company serves the Atkinson and Annawan exchanges. Mid Century Telephone Cooperative, Inc. serves the Ellisville, Altona, Williamsfield, Table Grove, Summum, Fairview, Smithfield, Maquon, Gilson, Victoria, Marietta, Bishop Hill, and Lafayette exchanges. Reynolds Telephone Company serves only the Reynolds exchange. Metamora Telephone Company provides service in the Metamora and Germantown Hills exchanges. Harrisonville Telephone Company serves the Columbia, Dupo Prairie Du Rocher, Red Bud, Renault, Valmeyer, and Waterloo exchanges. Marseilles Telephone Company serves only the Marseilles exchange while Viola Home Telephone Company serves only the Viola exchange. Petitioners each provide service to less than 2% of subscriber lines nationwide. Petitioners are each a "rural telephone company" within the meaning of Section 153(37) of the Federal Act and Section 51.5 of the rules of the Federal Communications Commission ("FCC"). As rural telephone companies, Petitioners each possess a rural exemption under Section 251(f)(1)(A) of the Federal Act from the requirements of Section 251(c) of the Federal Act.

Sprint is an interexchange telecommunications carrier authorized to provide interexchange services throughout Illinois. Sprint is authorized by the Commission to provide resold and facilities-based local exchange telecommunications services as well in those portions of Illinois served by Illinois Bell Telephone Company and Verizon North, Inc. and Verizon South, Inc. According to Sprint's petition to intervene, such local authority was granted in Docket Nos. 96-0141 and 96-0598, respectively. Pursuant to the Order entered in Docket No. 96-0261, Sprint states that it is also authorized to provide resold local exchange services in those portions of MSA-1 served by Central Telephone Company of Illinois ("Centel"). Sprint relates that it received authority to provide local exchange service in those portions of Illinois outside of MSA-1 served by Centel in Docket No. 97-0295. Sprint reports that the Centel exchanges have subsequently been sold to Illinois Bell Telephone Company and Gallatin River Communications L.L.C. Sprint currently is not authorized to provide local exchange services within any of the Petitioners' serving areas. On May 6, 2005, however, Sprint filed an application requesting authority to provide resold and facilities-based local and

interexchange services throughout Illinois. Sprint's application is identified as Docket No. 05-0301.

As indicated above, Petitioners have initiated these proceedings to resolve certain disputes with Sprint. On September 7, 2004, Sprint sent a letter to each Petitioner seeking to begin negotiations for an interconnection agreement pursuant to Sections 251 and 252 of the Federal Act. Over the next few months, Petitioners and Sprint exchanged correspondence intended to focus and clarify the interconnection request. Sprint does not seek to interconnect with Petitioners pursuant to Section 251(c) of the Federal Act. Rather, Sprint wishes to interconnect and exchange traffic pursuant to subsections (a) and (b) of Section 251.

According to Sprint, it seeks interconnection with Petitioners to offer competitive alternatives in telecommunications services to consumers in rural Illinois through a business model in which Sprint provides telecommunications services to other competitive service providers seeking to offer local voice service. With regard to Illinois, Sprint has entered into a business arrangement with MCC Telephony of Illinois, Inc. ("MCC") to support its offering of local and long distance voice services.[1] Sprint states that the relationship enables MCC to enter the local and long distance voice market without having to "build" a complete telephone company. In effect, MCC has outsourced much of the network functionality, operations, and back-office systems to Sprint. Sprint relates that it has relationships utilizing this same market entry model with Wide Open West, Time Warner Cable, Wave Broadband, Blue Ridge Communications, and others not publicly announced serving almost 300,000 customers across over a dozen states including Illinois.

Under the arrangement between MCC and Sprint, MCC is responsible for marketing and sales, end-user billing, customer service, and the "last mile" portion of the network which includes the MCC hybrid fiber coax facilities, the same facilities it uses to provide video and broadband Internet access. Service is provided in MCC's name. Sprint provides the public switched telephone network ("PSTN") interconnection utilizing Sprint's switch (MCC does not own or provide its own switching), competitive LEC status, and the interconnection agreements it has or is negotiating with incumbent LECs. Sprint also uses existing numbers or acquires new numbers, provides all number administration functions including filing of number utilization reports with the North American Numbering Plan Administrator, and performs the porting function whether the port is from the incumbent LEC or a competitive LEC to Sprint or vice versa. Sprint is also responsible for all inter-carrier compensation, including exchange access and reciprocal compensation. Sprint provisions 9-1-1 circuits to the appropriate Public Safety Answering Points ("PSAP") through the incumbent LEC selective routers, performs 9-1-1 database administration, and negotiates contracts with PSAPs where

[1] On December 15, 2004, the Commission entered an Order in Docket No. 04-0601 authorizing MCC to provide resold and facilities-based local and interexchange telecommunications services throughout Illinois. MCC is an affiliate of Mediacom Communications Corporation, a cable television provider within parts of Petitioner's serving area.

necessary. Finally, Sprint places MCC directory listings in the incumbent LEC or third party directories.

In light of the relationship between Sprint and MCC, specifically the services provided by Sprint to MCC, Petitioners contend that they have no obligation to negotiate reciprocal compensation, local number portability, or interconnection with Sprint. Petitioners maintain this position regardless of their rural carrier exemptions under Section 251(f)(1)(A).

III. SECTION 251(f)(1)(A) THRESHOLD INQUIRY

Despite Petitioners' insistence to the contrary, a threshold inquiry involving Section 251(f) exists that could resolve this matter, at least in part. As previously noted, Section 251(f)(1)(A) exempts Petitioners, as rural telephone companies, from the obligations imposed in Section 251(c).[2] Nevertheless, Petitioners seek a declaratory ruling that it need not negotiate interconnection as required by Section 251(c), or, in the alternative, a suspension under Section 251(f)(2) of the obligation to negotiate interconnection as required by Section 251(c). Although Petitioners seek the relief regarding Section 251(c) independent of the Section 251(f)(1)(A) exemption, the Commission is not inclined to expend limited resources answering questions that are moot. Because Petitioners possess an exemption from Section 251(c), the type of arrangement Sprint has with MCC and the services provided by Sprint to MCC are irrelevant as they relate to Section 251(c). Accordingly, the Commission declines to issue a declaratory ruling regarding the obligations established by Section 251(c), which is within its discretion to do under Section 200.220(a). Nor will the Commission consider a suspension of the Section 251(c) obligations under Section 251(f)(2) given the exemption Petitioners already possess. In any event, the Commission notes Sprint's claim that it is not seeking interconnection under Section 251(c).

The next step in the inquiry is to determine whether Petitioners' exemption from Section 251(c) also covers their obligations under Section 251(b). Section 251(c)(1) obligates all incumbent LECs to negotiate in good faith terms and conditions of agreements fulfilling the obligations established for all LECs (both incumbent and competitive) in Section 251(b). Petitioners argue that their duty to negotiate the obligations of Section 251(b) arise from Section 251(c). If Section 251(c) does not apply to them, Petitioners conclude that Section 251(b) can not either. Staff, however, contends that Petitioners overstate the reach of their exemption from Section 251(c). Section 251(b), according to Staff, establishes obligations of all LECs independent from any exemption of Section 251(c) for rural incumbent LECs. Because it seeks to interconnect under Section 251(a) and (b), Sprint maintains that Section 251(f)(1) provides no exemption for Petitioners. Consistent with the FCC's treatment of this issue, the Commission finds that an exemption from Section 251(c) does not encompass the obligations imposed in Section 251(b). Section 251(f)(1)(A) provides relief only from the requirements of Section 251(c).

[2] The Commission also notes that it has not received a bona fide request seeking to lift any of the Petitioners' exemption pursuant to Section 251(f)(1)(B).

In light of the limited scope of Section 251(f)(1)(A), Petitioners' declaratory ruling request regarding Section 251(b)(2) and (5) remains for the Commission's consideration. Whether Petitioners have any duty under Section 251(a) to negotiate interconnection and (b) to provide number portability and establish reciprocal compensation arrangements for the transport and termination of telecommunications under the circumstances described above is the focus of the remainder of this Order.

IV. PETITIONERS' DUTY TO NEGOTIATE[3]

A. Petitioners' Position

While Petitioners do not deny that Sprint is a telecommunications carrier that provides telecommunications services in various areas of Illinois, Petitioners do not believe that this fact means that Sprint is a telecommunications carrier for all purposes. Petitioners note Sprint's acknowledgement of the fact that the focus of both the state and federal definitions of telecommunications services is primarily upon the services being provided rather than the provider of those services. Petitioners point out that Section 51.703(a) of the FCC's rules provides that LECs must "establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting *telecommunications carrier*." (emphasis added) Section 153(44) of the Federal Act defines "telecommunications carrier" as:

> any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under [the Federal Act] only to the extent that it is engaged in providing telecommunications services, except that the [FCC] shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

Section 153(46) of the Federal Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

Petitioners apply the Federal Act's definitions to the service that Sprint intends to provide MCC and conclude that Sprint is not acting as a telecommunications carrier. Specifically, Petitioners state that Sprint clearly will not be providing the services over which it seeks negotiation "directly" to the public. Nor, Petitioners continue, can it be said that Sprint will be providing services "to such classes of users as to be effectively available directly to the public" when it provides services to MCC which will then provide services to the public. Petitioners acknowledge that the Public Utilities Commission of Ohio ("PUCO") recently issued a decision rejecting the arguments Petitioners now

[3] As noted above, when given the opportunity, Staff declined to address the merits of Petitioners' declaratory ruling request.

make. In the PUCO docket,[4] similarly situated small rural incumbent LECs sought exemptions under Section 251(f)(1) and (2) of the Federal Act when confronted with an arrangement between MCImetro Access Transmission Services, LCC, Intermedia Communications, Inc., and Time Warner Cable Information Services (Ohio), LLC similar to the arrangement between Sprint and MCC. Petitioners contend that the PUCO is simply wrong.

In support of its view of the PUCO decision, Petitioners state that both the FCC and United States Court of Appeals for the District of Columbia Circuit have rejected the argument that a service can be interpreted as effectively available directly to the public by looking to how a private carriers' telecommunications carrier customers use that service. According to Petitioners, in *Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (1999), the D.C. Circuit affirmed the FCC's conclusion that the term "telecommunications carrier" under the Federal Act incorporates the preexisting definition of "common carrier" established by the earlier case of *National Association of Regulatory Commissioners v. FCC* ("*NARUC*"), 525 F.2d 630 (D.C. Cir. 1976). (*See Virgin Islands Telephone Corp.*, 198 F.3d at 925-26)

Under the *NARUC* test, Petitioners state that "common carrier" status turns on whether the carrier "undertakes to carry for all people indifferently." (*Id.* at 926 (citing *NARUC*, 525 F.2d at 642)) In *Virgin Islands Telephone*, the court reviewed an FCC finding that an AT&T affiliate called AT&T-SSI was not acting as a common carrier by making capacity on its submarine cables available to other telecommunications providers that would, in turn, make that capacity available through services provided to end-user customers. The FCC had concluded that a service will not be considered "available to the public" or "effectively available to a substantial portion of the public" if it is "provided only for internal use or only to a specified class of eligible users under the Commission's rules." The FCC also stated that "whether a service is effectively available directly to the public depends on the type, nature, and scope of users for whom the service is intended and whether it is available to 'a significantly restricted class of users.'" (*Virgin Islands Telephone*, 198 F.3d at 924) The FCC rejected the argument that AT&T-SSI would be making a service effectively available directly to the public because AT&T-SSI's *customers* would use the capacity to provide a service to the public, noting that "[s]uch an interpretation is contrary to the plain language of the [Federal Act] by focusing on the service offerings AT&T-SSI's customers may make rather than on what AT&T-SSI will offer." (*Id.*)

In reaffirming the *NARUC* test, Petitioners note that the FCC specifically rejected the inclusion of a "carrier's carrier" in the definition of telecommunications carrier and specifically rejected the suggestion that the Federal Act "introduce[d] a new concept whereby we must look to the customers' customers to determine the status of a carrier." (*Id.* at 926) According to the court, Petitioners continue, the key to common carrier status is "the characteristic of holding oneself out to serve indiscriminately." (*Id.* at 927)

[4] *In the Matter of the Application and Petition in Accordance With Section II.A.2.b. of the Local Guidelines Filed by: The Champaign Telephone Company* et al. 04-1494-TP-UNC et seq., Finding and Order, January 26, 2005; Order on Rehearing, April 13, 2005.

(quoting *NARUC*, 525 F.2d at 642) Petitioners state that the court approved the FCC's decision to contrast such common carrier/telecommunications carrier behavior to "private carrier" activity under which a carrier makes individualized decisions about whether and on what terms to serve done under contract between carriers. (*Virgin Islands Telephone Corp.*, 198 F.3d at 925)

Under this analysis, Petitioners argue that Sprint is clearly acting as a private carrier in its dealings with MCC. Petitioners add that it makes no difference whether Sprint is acting as a transiting carrier or a private switching and back office service provider. So long as Sprint is not providing service to end-users or making its service available indiscriminately to all takers, Petitioners aver that Sprint is providing private carrier or vendor services to MCC and is not providing service to the public. As a private carrier, Petitioners maintain that Sprint is not a telecommunications carrier and is not seeking to negotiate for the provision of telecommunications service in Petitioners' respective serving areas.

Petitioners also argue that Sprint's definition of telecommunications carrier does not comply with common sense. For example, even though Sprint seeks to negotiate reciprocal compensation, Petitioners assert that Sprint will originate no traffic on which reciprocal compensation will be owed and will terminate no traffic on which it will be owing. Any such traffic, Petitioners continue, would be MCC's and MCC should be primarily responsible. Similarly, while Sprint seeks an agreement on local number portability, the entity to which such numbers would be ported to and portable from would be MCC. Petitioners contend that MCC should be responsible for such obligations directly to it. The same is true, Petitioners add, with dialing parity. In all cases, Petitioners argue, the contractual rights that Sprint is seeking would be properly negotiated by MCC and the contractual obligations for which they will be negotiating should be obligations on MCC for which they should have rights enforceable against MCC. Petitioners aver that the overall design of subsections (b) and (c) of Section 251 is to establish contractual privity between the parties that have the reciprocal rights and obligations. Petitioners do not believe that it makes any sense to interpose a back office service provider into the middle of that relationship. If MCC intends to provide telecommunications services, Petitioners maintain that MCC should be the one seeking negotiations.

Moreover, if taken to its extreme, Petitioners claim that Sprint's position would mean that every vendor whose services are incorporated into a telecommunications service is a "telecommunications carrier." This could not only allow every vendor in the industry to demand negotiations, Petitioners point out, it would also impose a number of regulatory burdens on vendors that have no ability to meet those burdens. Nor, according to Petitioners, does it make sense that a carrier that is certificated to provide telecommunications services somewhere (or even actually provides telecommunications services somewhere) is therefore entitled to negotiate agreements everywhere. In order for Section 251 to make practical sense, Petitioners contend that it must be limited to negotiations with carriers that have some plan to be a telecommunications carrier and provide telecommunications services within the serving

area of the LEC with which they seek to negotiate. Petitioners insist that Sprint simply does not meet those threshold conditions, whether measured under the terms of the Federal Act as interpreted by the FCC and federal courts or measured by a simple common sense reading of the obligations of the Federal Act.

Because Sprint will not be acting as a telecommunications carrier providing telecommunications services within the meaning of the Federal Act, Petitioners maintain that Sprint is the wrong entity to be negotiating the reciprocal compensation and local number portability arrangement that Sprint is seeking. Petitioners characterize Sprint's claim to be a telecommunications carrier and its reliance on MCC's intent to provide broadband voice information services in competition with Petitioners as a shell game. They state that the only role Sprint truly proposes to play under the agreement it proposes to negotiate with them is as private vendor to MCC.

So that their position is clear, Petitioners expressly state that they have no objection to the "business arrangement" that they understand to exist between Sprint and MCC. If MCC, whether directly or through its affiliates, intends to provide telecommunications services and be a telecommunications carrier in Illinois and in their respective serving areas, Petitioners asserts that this entire issue would be avoided if, as the Federal Act contemplates, MCC initiated the negotiation process with them. Petitioners contend that the absence of the purported local service provider overshadows what services Sprint may or may not provide. In their opinion, there is no apparent legitimate reason not to impose on the purported service provider the obligation to initiate and conduct negotiations and be a party to the resulting agreement, no matter whether it intends to self-provision or rely on third parties such as Sprint.

B. Sprint's Position

Sprint maintains that Petitioners are obligated by the Federal Act to interconnect with it and provide number portability and establish reciprocal compensation arrangements despite the fact that MCC is the entity directly serving the end-user. Sprint relates that it has entered into agreements with telecommunications service providers that intend to compete with the Petitioners' local voice services. These agreements require Sprint to provide certain services, including but not limited to number acquisition and administration, telephone number assignment, including local routing numbers, port requests, switching, and transport of local calls, and exchange access to and from the PSTN, including calls to 9-1-1 for end-users.

Like Petitioners, Sprint too relies on the definition of "telecommunications service" in Section 153(46) of the Federal Act to support its position. Sprint emphasizes the latter part of the definition ("..., or to such class of users as to be effectively available directly to the public, ...") and notes the PUCO's recent decision relying on this portion of the definition.[5] As discussed above, the PUCO rejected arguments similar to those raised by Petitioners in a case involving services similar to those which Sprint intends to provide to MCC. The PUCO specifically found that MCI was a

[5] See Footnote No. 4.

telecommunications carrier and that the rural incumbent LECs had a duty to interconnect with MCI. The PUCO also concluded that MCI was acting in a role no different than other telecommunications carriers whose network could interconnect with the rural incumbent LECs so that traffic is terminated to and from each network and across networks. Like MCI, Sprint contends that its proposed interconnection with Petitioners places it in the same position as other intermediate carriers whose interconnections terminate traffic to and from each network and across networks. Because its services will be effectively available to the public (through MCC), Sprint maintains that it is a telecommunications carrier offering telecommunications services.

Because it is telecommunications carrier, Sprint argues further that Section 251(a) of the Federal Act establishes an independent basis for interconnection. Section 251(a) requires each telecommunications carrier to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. Sprint reports that neither subsection (f)(1) nor (f)(2) of Section 251 provide Petitioners with an exemption from their obligation to allow for direct or indirect interconnection. Moreover, Sprint points out that it has not requested interconnection pursuant to Section 251(c). In this regard, Sprint is a facilities-based carrier that does not require access to Section 251(c) provisions such as unbundled network elements, collocation, and resale. Sprint states that it is much like a wireless carrier in that it owns all of its own facilities and; therefore, does not need to take advantage of the rights granted to telecommunications carriers under Section 251(c) to use an incumbent LEC's network to compete against the incumbent LEC.

Sprint adds that Section 251(a) does not specifically mention the types of traffic to be exchanged nor does it exclude certain types of traffic. In this regard, Sprint states that Congress has provided definitions of not only "telephone exchange service," but also "telephone toll service."[6] Congress, Sprint continues, could easily have excluded any one of these services or limited Section 251(a)'s applicability to any one of these services, but it did not. Sprint contends that Petitioners may not, therefore, impose a restriction on Sprint that is not contained in the statute. To allow Petitioners to do so, Sprint argues, would undermine one of the enduring tenants of statutory construction – that is – to give effect, if possible, to every clause and word of a statute. Accordingly, Sprint concludes that Petitioners must interconnect either directly or indirectly with it for the exchange of local traffic pursuant to Section 251(a).

Not only does the plain language of Section 251(a) require Petitioners to interconnect with Sprint independent of Section 251(c), Sprint observes that it appears the Commission has approved an agreement between Geneseo Telephone Company and a wireless carrier, Nextel Partners, that contains terms for both direct and indirect interconnection and reciprocal compensation without reference to Section 251(a) of the Federal Act.[7] Of particular interest to Sprint is the part of the agreement that requires

[6] 47 U.S.C. §§ 153(47) and 153(48).
[7] *See* Order entered on April 21, 2004 and Amendatory Order entered on May 26, 2004 in Docket No. 04-0120; *NPCR, Inc. d/b/a Nextel Partners, as agent for Nextel WIP License. Corp. and Nextel WIP*

the originating party to pay any transiting charges when the parties exchange traffic on an indirect basis.[8] Sprint states that this is exactly the type of arrangement Sprint seeks to enter with Petitioners. Sprint is adamant that Petitioners should not be permitted to discriminate against it. Indeed, Sprint insists, any such discrimination would be antithetical to the FCC's policy pronouncement that "all telecommunications carriers that compete with each other should be treated alike regardless of the technology used..."[9] Both it and Nextel Partners, Sprint points out, are telecommunications carriers that are obligated to comply with and are entitled to all the rights and privileges that result from Section 251(a).

C. Commission Conclusion

Sprint and MCC's interest in competing in certain of the more rural exchanges in Illinois is significant in that it represents one of the first, if not the first, competitive landline ventures into the relevant exchanges. To determine if Petitioners have a duty to negotiate interconnection with Sprint, the Commission must first evaluate whether Sprint, for purposes of its arrangement with MCC, is a telecommunications carrier as defined by federal law. A telecommunications carrier is "any provider of telecommunications services." 47 U.S.C. §153 (44). Federal law defines telecommunications services as "the offering of telecommunications for a fee directly to the public, or to classes of users as to be effectively available to the public, regardless of facilities used"...a telecommunications carrier is a common carrier to the extent it provides telecommunications services. 47 U.S.C. §153 (46).

The parties offer a number of court and public utility commission decisions to aide us in interpreting these definitions, relying heavily on *Virgin Islands Telephone Corporation v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) ("Virgin Islands").[10] The *Virgin Islands* decision distinguishes between private carriers and common carriers, affirming the FCC's determination that a telecommunications carrier must be a common carrier. *Id.* To be considered a common carrier, an entity must meet a two-pronged test as set forth in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir. 1976) ("NARUC I"), followed by *United States Telecom Ass'n v. FCC*, 295 F. 3d 1326, 1329 (D.C. Cir. 1976) ("USTA"). First, the Commission must consider whether Sprint holds itself out to serve all potential users indifferently. *Id.* at 1329, 642. The USTA decision further clarified this prong, by noting that a carrier offering its services only to a defined class of users may still be considered a common carrier if it holds itself out to indiscriminately serve all within that class. *USTA* at 1333.

Extension Corp. and Geneseo Telephone Company; Joint Petition for Approval of Interconnection Agreement between Geneseo Telephone Company and NPCR, Inc. pursuant to 47 U.S.C. § 252.

[8] See *Id* at Section 4.5.

[9] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, ¶ 993 (1996) (*Local Competition Order*) (subsequent history omitted).

[10] In *Virgin Islands*, the court upheld the FCC's decision to classify AT&T-SSI as a private carrier, finding the FCC's equating a telecommunications carrier with a common carrier to be reasonable. *Virgin Islands* at 922.

Second, the Commission must determine whether Sprint allows customers to transmit information of the customer's own choosing. *Id at 1329, 642.*

Petitioners insist that Sprint is a private carrier. They argue because MCC will be providing the "last mile," MCC is providing services to the public, not Sprint. Sprint, however, asserts that it will provide all public switched telephone network ("PSTN") interconnection, use of existing numbers and all number administration functions, perform the porting function, provision 9-1-1 circuits to the appropriate public safety answering point ("PSAP"), administer 9-1-1 databases and placement of directory listings with ILEC or other directories. *Burt affidavit* at 4. Sprint argues that it indiscriminately offers and provides these services to other cable companies, including Wide Open West, Time Warner Cable, Wave Broadband and others. *Burt affidavit* at 3. Sprint further clarifies this point in James D. Patterson's affidavit.[11] According to Mr. Patterson, Sprint offers the services at issue here indifferently to entities capable of providing their own "last mile" facilities. *Patterson affidavit* at 3. Sprint also insists it meets the second prong of the *NARUC I* test by not altering the content of the voice communications between end users.

The Commission finds that Sprint is a common carrier/telecommunications carrier. While Sprint does not offer its services directly to the public, it does indiscriminately offer its services to a class of users so as to be effectively available to the public, meaning it provides services to those capable of providing their own "last mile" facilities. Thus, Sprint meets the first prong of the *NARUC I* test. Sprint also passes the second prong of the *NARUC I* test by not altering the content of voice communications by end users. Furthermore, the providers of the last mile, in this case MCC, make the service available to anyone in their respective service territories, thus making Sprint's services effectively available to the public.

Petitioners attempt to persuade the Commission to follow the Iowa Public Utilities Board's ("IPUB") interpretation of the *Virgin Islands* decision. IPUB recently dealt with these issues, finding that rural ILECs have no duty to negotiate interconnection with Sprint. *Sprint Communications Company v. Ace Communications Group, et al.*, Docket No. ARB-05-2 (IPUB 2005). IPUB found Sprint only intended to offer its services to its "private business partners," not on a common carrier basis. We respectfully disagree with IPUB's interpretation, based on the above analysis.

Additionally, the Commission notes its previous decision in the *SCC Arbitration Decision*, Docket No. 00-0769 ("SCC"). In *SCC*, the Commission concluded that SCC, a 9-1-1 and emergency services provider, was a common carrier even though it provided its services directly to ILECs, CLECs, certain State agencies, wireless operators, emergency warning systems and emergency roadside assistance programs. The Commission reached this conclusion even though SCC did not directly serve the general public. The key was the fact that SCC made its services indiscriminately available to those who could use its services. *SCC* at 8. In the instant docket, we

[11] Sprint supplied Mr. Patterson's affidavit with its Brief on Exceptions.

conclude that Sprint also makes its services indiscriminately available to those who could use its services.

The Commission also notes that we previously analyzed the *Virgin Islands* decision in *SCC* and found *Virgin Islands* to be factually dissimilar. In *SCC*, the Commission stated AT&T-SSI failed to meet either prong of the *NARUC I* test, as its main service was to "provide hardware, lay cable and lease space to cable consortia, common carriers and large businesses with the capacity to interconnect to its proposed cable on an individualized basis." *SCC* at 8. Essentially, AT&T-SSI was providing bulk capacity. We believe this distinction is relevant to this proceeding as well. Here, Sprint is not offering bulk capacity. It is offering a host of technical functions, including 9-1-1 provisioning services, to any entity that provides its own "last mile" facilities.

At the eleventh hour, Petitioners filed a Motion to Cite Additional Authority based on a decision handed down by the U.S. Supreme Court in *National Cable & Telecommunications Association v. Brand X Internet Services*, Docket No. 04-0277 ("Brand X"). Both Sprint and Staff responded. Given the timing of this decision and the limited opportunity to explore it, the Commission declines to consider the effect, if any, of the *Brand X* decision at this time.

Since we reached the conclusion that Sprint is a telecommunications carrier for purposes of this docket, the Commission must now determine if 251(a) requires Petitioners to negotiate with Sprint. 251(a)(1) requires a telecommunications carrier "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. §251(a)(1). This section contains no restrictions on who may interconnect with whom. Because there are no restrictions, the Commission finds that Petitioners must negotiate the terms and conditions for interconnection with Sprint.

In addition, it seems that the Commission's findings are greatly serving the public interest. Competition in the telecommunications industry has brought about significant technological advances that few who live in rural areas in Illinois have been able to take advantage of. The type of arrangement between MCC and Sprint potentially allows those in rural areas to benefit from the competitive telecommunications market.

Turning to Petitioners' duties under 251(b)(2) and (5) and whether the Commission should grant a waiver of these duties under 251(f)(2). 251(b)(2) governs a LECs' duty to provide number portability. 251(b)(5) covers a LECs' duty to provide reciprocal compensation. Sprint, through its agreement with MCC, intends to take responsibility for these services for MCC's customers. Petitioners, as LECs, would be obliged to negotiate with Sprint on these two provisions if 251(f)(2) is not applicable. At this time, the Commission does not have sufficient information before it based on the record in this docket to make a determination as to whether Petitioners may receive a waiver of its 251(b)(2) and (5) obligations under 251(f)(2). These issues should be addressed in the newly-initiated arbitration between Sprint and Petitioners in Docket No.

05-0402. The parties are also free to fully brief the *Brand X* decision in Docket No. 05-0402.

Based on the above discussion, the Commission denies Petitioners' request for a declaratory ruling. Any issues not addressed by this decision should be addressed in Docket No. 05-0402. The Commission, in favoring Sprint's position on the right to interconnect with Petitioners, fully expects Sprint to abide by its sworn affidavits, especially its responsibility for all intercarrier compensation arrangements. The Commission also fully expects Sprint to continue to indiscriminately offer these services, as its affidavits state, to those entities that are capable of providing the "last mile."

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein, is of the opinion and finds that:

(1) Petitioners provide local exchange telecommunications services as defined in Section 13-204 of the Act;

(2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;

(3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;

(4) as rural telephone companies, Petitioners possess a rural exemption under Section 251(f)(1)(A) of the Federal Act from the requirements of Section 251(c) of the Federal Act;

(5) in light of Petitioners' exemption from the requirements of Section 251(c) of the Federal Act, the Commission need not rule on Petitioners' requests regarding its obligations under Section 251(c);

(6) given the manner in which Sprint proposes to serve MCC, Sprint is a telecommunications carrier in this instance with which Petitioners must negotiate under subsections (a) and (b) of Section 251 of the Federal Act;

(7) in light of an insufficient record, declines to make a ruling regarding Petitioners' requests under Section 251(f)(2) of the Federal Act in this Order;

(8) the determinations in these matters are limited to the facts and circumstances presented to, and considered by, the Commission herein, and are without prejudice to any positions, arguments, or evidence that may be advanced in any other proceeding; and

(9) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that because Sprint Communications, L.P. d/b/a Sprint Communications Company L.P. is a "telecommunications carrier," Petitioners have an obligation to negotiate with Sprint Communications, L.P. d/b/a Sprint Communications Company L.P., or any similarly situated entity, under subsections (a) and (b) of Section 251 of the federal Telecommunications Act.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters is this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 13th day of July, 2005.

(SIGNED) EDWARD C. HURLEY

Chairman

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on May 18, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 05-C-0170 - Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies.

CASE 05-C-0183 - Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Armstrong Telephone Company of New York.

ORDER RESOLVING ARBITRATION ISSUES

(Issued and Effective May 24, 2005)

BY THE COMMISSION:

INTRODUCTION

On February 9, 2005, Sprint Communications Company L.P. (Sprint) petitioned the Commission to arbitrate, pursuant to the Telecommunications Act of 1996 (the 1996 Act), eleven issues it was unable to resolve with eleven independent telephone companies.[1] On February 14, 2005, Sprint also petitioned us to arbitrate the same issues with respect to the

[1] The eleven companies are: Berkshire Telephone Corporation, Cassadaga Telephone Corporation, Crown Point Telephone Corporation, Delhi Telephone Company, Dunkirk and Fredonia Telephone Corporation, Empire Telephone Corporation, The Middleburgh Telephone Company, Ontario Telephone Company, Inc., Pattersonville Telephone Company, Taconic Telephone Corporation, and Trumansburg Telephone Company, Inc.

Armstrong Telephone Company of New York.[2] The independent telephone companies responded to Sprint's petitions on March 4, 2005.

On April 5, 2005, the Administrative Law Judge assigned to these cases conducted a telephone conference with the parties to set the schedule for the remainder of the proceedings.[3] With the parties' concurrence, a mediator was provided by the Office of Hearings and Alternative Dispute Resolution to meet with them, on April 11, 2005, and determine whether any of the disputed issues could be settled. Subsequently, the parties notified the Commission that four issues had been resolved and no longer require our action.[4]

On April 20, 2005, the Administrative Law Judge conducted an on-the-record conference. During the conference, the parties reviewed with the Judge their final positions and relevant portions of their written submissions, including the supplements they provided on April 8 and 18, 2005, respectively. Below, we address and resolve the disputed issues in accordance with the 1996 Act's requirements.

THE DISPUTED ISSUES[5]

1. The Definition of "End Users"

For the twelve interconnection agreements, Sprint proposes to use a definition of "end users" that includes other service providers to whom Sprint would provide interconnection, telecommunications and other telephone exchange services. Pointing to Federal Communications Commission (FCC) regulations, the provisions of the 1996 Act and the Public Service Law,

---

[2] The twelve companies are collectively referred to as the independent telephone companies.

[3] Cases 05-C-0170 and 05-C-0183, Ruling Establishing Case Schedule (issued April 6, 2005).

[4] Cases 05-C-0170 and 05-C-0183, Amendment of Sprint's Petition for Arbitration, dated April 20, 2005.

[5] The disputed issues are identified with the same numbers presented in Sprint's petition and the independent telephone companies' response before any of the issues were settled.

Sprint states that interconnection agreements need not be limited to services for retail customers.

Sprint has entered into a business arrangement with Time Warner Cable which plans to offer voice services in competition with the independent telephone companies. Sprint's agreement with Time Warner requires it to provide interconnections to the public switched network so Time Warner can exchange traffic with telephone companies.[6]

According to Sprint, the independent telephone companies are improperly attempting to preclude local service competition. It believes that Time Warner's provision of local and long distance voice service is consistent with the intent of the 1996 Act and the innovative market entry models the FCC has embraced. It also believes the proposed competition is consistent with the market activity the Commission has fostered. Sprint points out that it has interconnection agreements with other local exchange telephone companies in New York, and elsewhere, that enable Time Warner to offer voice services.[7]

On the other hand, the independent telephone companies claim that the interconnection agreements should not establish Sprint as a "transit provider" for other carriers. According to them, the 1996 Act, §251(b), does not require any anticipation of the needs of third-party service providers who have not sought to establish their own interconnection arrangements.

---

[6] The agreement also requires Sprint to provide number acquisition and administration, submission of local number portability orders to local exchange carriers, inter-carrier compensation for local and toll traffic, E911 connectivity, operator services, directory assistance (including call completion) and the placement of orders for telephone directory listings. For its part, Time Warner will provide "last mile" network facilities using hybrid fiber coaxial facilities, marketing and sales, end user billing and customer service.

[7] The following interconnection agreements with local exchange carriers enable Sprint to offer voice services for Time Warner: Case 99-C-1389, Sprint and Verizon New York, Inc. (definition of "customer"); Case 03-C-1799, Sprint and ALLTEL New York, Inc. (Attachment 4-1.1); and Case 03-C-1789, Sprint and Frontier Telephone of Rochester, Inc.

They believe such third-party providers should execute their own interconnection agreements and establish privity of contract with the independents. They also note that their tariffs provide interconnection terms for service providers who do not seek to enter into other arrangements.

* * *

The issue raised here by the independents is whether a proper basis exists for including a third-party telecommunications provider in the interconnection agreements' definition of "end user." The implication is that, by limiting the definition of "end user" to only the residential or business customers served, the independents would preclude Sprint from providing interconnection and telecommunications services, including transit service, to Time Warner Cable.

47 U.S.C. §251 sets forth carrier interconnection responsibilities. It delineates (1) general interconnection duties applicable to all telecommunication carriers [§251(a)]; (2) interconnection obligations for local exchange carriers [§251(b)]; and, (3) additional interconnection obligations that apply to incumbent local exchange carriers [§251(c)]. The independents believe that §251(b) does not require them, as local exchange carriers, to interconnect with a carrier that is not an ultimate provider of end user services, as Sprint concedes it is not. In addition, the independents maintain that Sprint's role as a transit provider for Time Warner Cable means that Sprint is not a telecommunications carrier within the meaning of §251(a) and, therefore, not entitled to interconnection.

The FCC has defined "telecommunications carrier" as "any provider of telecommunications services… ."[8] "Telecommunication services" are defined as the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the

[8] 47 U.S.C. §153(44). The definition of "telecommunications carrier" excepts aggregators of telecommunications services, an exception not applicable to Sprint.

public, regardless of the facilities used."[9] Whether a carrier meets the definition of a "telecommunications carrier" entitled to a §251 interconnection depends on whether the services that the carrier provides are "effectively available directly to the public," rather than any characterization of those services.[10]

Sprint's agreement to provide Time Warner Cable with interconnection, number portability order submission, inter-carrier compensation for local and toll traffic, E911 connectivity, and directory assistance, for Time Warner to offer customers digital phone service, meets the definition of "telecommunications services." Sprint's arrangement with Time Warner enables it to provide service directly to the public. While Sprint may act as an intermediary in terminating traffic within and across networks, the function that Sprint performs is no different than that performed by other competitive local exchange carriers with networks that are connected to the independents. Sprint meets the definition of "telecommunications carrier" and, therefore, is entitled to interconnect with the independents pursuant to §251(a).

We find unpersuasive the independents' claim that their §251(b) duties as local exchange carriers are not triggered because Sprint is not an ultimate provider of end user services. The provisions Sprint has offered in Section 2.4 of the proposed interconnection agreements are consistent with the §251 requirements and we find that they should prevail.

2. Indirect Interconnections

Sprint proposes to exchange local traffic with the independent telephone companies by using indirect interconnections where it does not have sufficient local traffic volumes to warrant direct connections. Sprint states that

---

[9] 47 U.S.C. §153(46).

[10] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, August 1, 1996, 11 Fcc Rcd 15499, para. 992.

indirect interconnections are allowed by the 1996 Act, the FCC, and the Commission.

The independents are not opposed to indirect interconnections pursuant to §251(a) of the 1996 Act. However, they insist that Sprint must adhere to the requirements of §251(b)(5) and establish dedicated points of interconnection for each independent telephone company network.

* * *

The independents have conceded that 47 U.S.C. §251(a) "affords the option to Sprint of seeking indirect interconnection." Nevertheless, they maintain that Sprint cannot use it as the basis for a §251(b)(5) interconnection request because a direct connection is required to exchange traffic, especially local traffic, between end users in the same rate center. Sprint contends that §251(a) is clear regarding direct and indirect interconnections.

In 1996, the FCC addressed direct versus indirect interconnection and concluded that "telecommunications carriers should be permitted to provide interconnection pursuant to §251(a) either directly or indirectly, based upon their most efficient technical and economic choices."[11] The FCC noted that additional §251(c) interconnection obligations applied only to incumbent local exchange carriers by concluding that "§251(a) interconnection applies to all telecommunications carriers including those with no market power… [because] the duty to interconnect directly or indirectly is central to the 1996 Act and achieves important policy objectives."[12] (emphasis supplied)

Recently, as part of its intercarrier compensation inquiry, the FCC solicited comments regarding transport obligations, including whether the duty to interconnect directly or indirectly pursuant to §251(a) should include an obligation

---

[11] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, August 1, 1996, 11 Fcc Rcd 15499, para. 997.

[12] Id.

to provide transport transit service and whether a transit obligation could arise under §251(b)(5).[13] Again, the FCC concluded that, pursuant to §251(a), all telecommunications carriers should provide direct or indirect interconnection depending on efficiency, economic, and technical considerations.

Thus, it is clear that Sprint's position concerning the duty of telecommunications carriers pursuant to §251(a) to interconnect directly or indirectly depending on cost, efficiency, and technical considerations is correct and supported by law, and should therefore prevail.

3. The Definition of "Local Traffic"

Sprint proposes to use a broad definition of "local traffic" that includes calls between telephone numbers in the same rate center, and calls between telephone numbers in different rate centers that have an established local calling area approved by the Commission. The independents, on the other hand, support a more restrictive definition of local traffic, limiting local calls to single telephone exchanges, not extending to local calling areas and excluding internet service provider traffic.

The independents state that local service is typically identified with a single exchange. They insist that extended area service constitutes service between two exchange areas. The independents observe that they have no authority to provide local service in adjacent exchanges operated by other carriers. They also maintain that Sprint's proposed definition was devised for end user purposes, not for intercarrier purposes.

As to internet service provider traffic, the independents claim that FCC precedent supports their position. They observe that the FCC has determined that traffic bound to an internet service provider is not subject to the 1996 Act's reciprocal compensation requirements.

---

[13] In the Matter of Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking, released March 3, 2005, 2005 FCC LEXIS 1390, para 128.

Our regulations and orders (in 16 NYCRR §602.1 and Cases 00-C-0789 and 01-C-0181) define local exchange service and provide the requirements for the exchange of local traffic. To comply with our regulations and requirements, the interconnection and the traffic exchange agreements provided by incumbent and competitive local exchange carriers have defined the local service exchange areas and the local calling areas. Thus, the applicable regulations establish the basis for the definition of local traffic that we are requiring here. We find that Sprint's definition of local traffic should be used in the interconnection agreements as it conforms best to the stated requirements.

4. Location Routing Numbers

The independent telephone companies would require Sprint to provide location routing numbers for each telephone exchange. They state this would help to avoid the erroneous routing and incorrect billing of intraLATA and interLATA telephone calls, and prevent call blocking errors.

According to Sprint, the applicable standard for local route numbers is one per switch (or point of interconnection) per LATA. It claims that the independents are expanding the standard by applying it to each of their local calling areas. Sprint believes this would burden number conservation efforts and require carriers to obtain additional codes beyond the existing requirement.

The independents insist, however, that Sprint should have a location routing number for each LATA and incumbent local exchange carrier to which it interconnects. To do otherwise, they claim, is contrary to the industry guidelines and creates potential for misrouted calls. Responding to Sprint's claim that this approach will lead to number exhaustion, the independents believe the claim is overstated. They also believe that Sprint should indemnify and hold them harmless for any call blocking errors due to Sprint's actions.

We find that number conservation is an important consideration here and Sprint's position is persuasive. The burden on number conservation would be substantial if we

established location routing number requirements that required Sprint to obtain more NPA/NXXs than it otherwise would. Moreover, the controlling standard for local route numbers is one per switch (or point of interconnection) per LATA and that standard should be maintained.[14] We note that industry standards in the Location Routing Number (LRN) Assignment Practices allow a carrier to obtain more than one LRN per LATA when there are multiple tandems in the same LATA served by different service providers. However, multiple LRNs are not required.

The independents' position -- that Sprint be required to assign a location routing number for each LATA and incumbent local exchange carrier to which it interconnects -- is unduly burdensome for competing carriers and it is not necessary. We find that the independents' concerns about calls made by their customers to Sprint end users with ported numbers being misrouted or blocked is overstated. Sprint has as much interest in preventing the misrouted and blocked calls as do the independent telephone companies. With the introduction of porting, the telecommunications industry addressed this problem and developed long-term database solutions for routing ported numbers. The Local Exchange Routing Guide (LERG) was expanded to handle this situation and the database contains location routing numbers to correctly route calls, whether they are ported numbers or not.

8. Interference with Third Party Services

Sprint proposes language requiring the parties not to interfere with, or impair, the other party's services or any services provided by third parties or other carriers. Such language is commonly referred to as a "network harm" provision. It typically states that neither party will use any service that causes hazards to the other's personnel or equipment. Sprint

---

[14] CC Docket No. 95-116, RM 8535, In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, Appendix E.1.1; CC Docket No. 01-92, In the Matter of Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9634, 9650-51, paras. 72, 112.

believes this provision is needed to protect its interests and those of the telecommunications providers for whom it would provide transit services.

As discussed above, the independent telephone companies prefer to negotiate directly with the carriers who would use Sprint's network. They insist that the proposed transit provider provisions for the agreements are improper and should be rejected. In other contexts, the independents observe, the parties do not intend to provide third parties any benefits, remedies, claims or rights. Further, they claim the term "non-party telecommunications provider" is vague, ambiguous and inconsistent with the 1996 Act's provisions.

We have approved traffic exchange and interconnection agreements containing clauses and provisions similar to the one Sprint proposes here.[15] We find no basis or any valid reason to reject Sprint's proposed language. It provides a means to protect the carriers' business arrangements, and we therefore endorse it. Where the parties have stated in the interconnection agreements that they do not intend to provide third parties any benefits, remedy, claim, or other rights, the provisions should indicate clearly that they do not apply to Sprint's arrangements with Time Warner Cable.

---

[15] For example, Case 03-C-1799, Interconnection Agreement of Sprint Communications Company L.P. and ALLTEL New York, Inc. (General Terms and Conditions, p. 13); Case 01-C-0589, Mutual Traffic Exchange Agreements of Sprint Communications Company L.P. and Citizens Telephone Company (Attachment 1, p. 8).

9. Charges for Default Routing

Sprint proposes to charge for the default routing of local calls.[16] In support of its proposal, Sprint observes that the FCC has allowed carriers to charge for default routing. Sprint insists that it should not bear any default routing transit or termination costs for the independents' originating traffic. To protect against this financial vulnerability, Sprint believes the matter should be addressed in the interconnection agreements.

The independent telephone companies agree that a carrier who fails to undertake local number portability data base inquiries should compensate the party who conducts the inquiries. However, they see no need to include such charges in the interconnection agreements. They note that the carrier costs associated with local number portability are interstate costs that are recoverable through interstate tariff recovery mechanisms.

We find that Sprint is correct; transit costs associated with default routing are not recovered through the FCC tariff. Federal tariff charges cover the cost of Sprint performing the query and internal network costs, but not the charges imposed by other carriers on Sprint for call completion (e.g., transit and termination). These additional costs, not covered by the FCC tariff, would not have been incurred by Sprint if the originating carrier had performed the query and routed the call to the terminating carrier. Any originating carrier would avoid these charges if they perform the query before routing the call. Sprint should be able, by virtue of

[16] Routing is simply the process of selecting the circuit path for a message. Default routing occurs when a company originating a call does not query all of the applicable number routing databases, due to limitations of its systems, and misses certain call routing information. As a result the call routes to the original number location (switch) instead of the location to which the number was ported. The default carrier which then receives the misrouted call must query the applicable databases, retrieve the routing information, and then route the call to completion; in addition, it unnecessarily incurs the cost of processing the misdirected call.

its interconnection agreements with the independents, to recover these charges from originating carriers that fail to query the database.

11. Telephone Directory Listings

The parties agree that the telephone numbers for Sprint-served customers physically located in a local service area should be listed in the independent's telephone directory. They disagreed as to whether Sprint customers with telephone numbers for a rate center, but no physical presence other than a loop, should also be included in the telephone directory.

In support of its position, Sprint states that it seeks only the types of subscriber listings that the independents provide their own customers. In response, the independents state that they are willing to provide Sprint customers equivalent, but not more favorable, directory listings. They also propose to include in the interconnection agreements provisions to cover the handling and shipping charges for the telephone directories that Sprint orders.

We find that the customers served by Sprint should be able to obtain the kinds of directory listings that the independents provide for the foreign exchange customers that they serve. The interconnection agreements should clearly provide for the comparable treatment of foreign exchange customers and specify the applicable charges for the telephone directories that the independent telephone companies provide.

Local Number Portability

In addition to the disputed issues identified in Sprint's February 2005 petition, the independents raised a local number portability matter in their March 2005 response.

The independent telephone companies claim to have provided clear and specific terms (for inclusion in Section 6.1 of the interconnection agreements) to establish the baseline requirements for local number portability. The provisions address when and how local number portability is provided from end offices, and the treatment of customer requests that trigger the need to port telephone numbers. The independents state that

these provisions will help to avoid delays and potential issues when porting activity is required.

The independents object to Sprint's proposed language for Section 6.1 and claim it is vague and uses undefined terms that would permit Sprint to avoid the baseline requirements that the independent telephone companies believe are necessary. They also criticize Sprint's revisions for not defining adequately the local number portability architecture that the parties plan to use.

We find that the provisions offered by the independent telephone companies for Section 6.1 of the interconnection agreements are generally acceptable and preferable as they more specifically address the process that is envisioned for performing local number portability. We also note, however, that the independent telephone companies have an obligation to follow the promulgated industry practices and standards applicable to local number portability at all of their central offices. Consequently, we do not intend for the interconnection agreements to change any of those requirements and obligations.

CONCLUSION

As provided above, we have resolved the issues Sprint and the independent telephone companies have submitted to us for arbitration. The parties are expected to execute interconnection agreements consistent with the uncontested results of their negotiations and with our determinations in this order on a timely basis.

The Commission orders:

1. The issues presented for arbitration by Sprint Communications Company L.P. and the independent telephone companies listed in this case are resolved as decided herein.

2. By no later than June 30, 2005, Sprint Communications Company L.P. and each independent telephone company identified in this order shall submit an executed interconnection agreement for Commission approval.

3. These proceedings are continued.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application and Petition in Accordance with Section II.A.2.b. of the Local Service Guidelines Filed by:	)	
The Champaign Telephone Company	)	Case No. 04-1494-TP-UNC
Telephone Service Company	)	Case No. 04-1495-TP-UNC
The Germantown Independent Telephone Company and	)	Case No. 04-1496-TP-UNC
Doylestown Telephone Company	)	Case No. 04-1497-TP-UNC

ORDER ON REHEARING

The Commission finds:

(1) On January 26, 2005, the Commission issued a Finding and Order (Commission Order) denying the applications and petitions of The Champaign Telephone Company (Champaign), Telephone Service Company (TSC), The Germantown Independent Telephone Company (Germantown), and Doylestown Telephone Company (Doylestown) seeking relief as rural telephone companies and rural carriers pursuant to 47 U.S.C. §251(f)(1) and (2)[1] and the Commission's local service guidelines.[2] Champaign, TSC, Germantown, and Doylestown (collectively, Applicants) had filed the applications and petitions on September 28, 2004, after each had received a September 14, 2004, bona fide request (BFR) for interconnection from MCImetro Access Transmission Services, LLC and Intermedia Communications, Inc. (collectively, MCI). Aside from seeking the aforementioned relief, Applicants had expressed concern about MCI's

1412

1 Under 47 U.S.C. §251(f)(1), a State commission shall terminate a rural telephone company exemption if a bona fide request for "interconnection, services, or network elements . . . is not unduly economically burdensome, is technically feasible, and is consistent with section 254 [concerning universal service requirements]. . . ." Similarly, under 47 U.S.C. §251(f)(2), a local exchange carrier having fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide is eligible for suspension or modification of interconnection obligations if "the State commission determines that such suspension or modification (A) is necessary (i) to avoid a significant adverse economic impact on users of telecommunications services generally; (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is consistent with the public interest, convenience, and necessity."

2 The local service guidelines were adopted in Case No. 95-845-TP-COI, *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues.*

relationship with Time Warner Cable Information Services (Ohio), LLC (Time Warner) and the detrimental financial effect upon Applicants of Time Warner's interest in deploying Voice over Internet Protocol (VoIP) service, particularly when MCI assists in such deployment.

In denying the applications and petitions, the Commission concluded that MCI, as a carrier certificated by the Commission, is qualified to submit an interconnection request to Applicants. The Commission added that MCI's arrangements with Time Warner place MCI in a role no different than other telecommunications carriers whose network could interconnect with Applicants so that traffic can be terminated to and from each network and across networks. In addition, the Commission determined that Applicants had not demonstrated that MCI's request for physical interconnection via DS3 access, in and of itself, would result in an undue economic burden beyond the economic burdens typically associated with efficient competitive entry. The Commission also stated that if Applicants had specific arguments and supporting documentation concerning MCI's BFR or a particular regulatory requirement, the Commission would consider such arguments and information in the context of a company-specific arbitration. Finally, in light of statements by MCI and Applicants that seemingly indicated there had been no interconnection negotiations, the Commission (a) tolled the nine-month timeframe established in 47 U.S.C. §252 as of the date that the applications and petitions were filed and (b) directed the parties to commence negotiations as of the date of the Commission Order.

(2) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.

(3) On February 25, 2005, Applicants filed for rehearing. Applicants argue that the Commission Order is "unjust, unreasonable, and an abuse of discretion," and that the Commission erred by (a) assigning to Applicants the burden of demonstrating the need to continue the 47 U.S.C. §251(f)(1) exemption, (b) finding that Applicants did not meet that burden, (c) terminating Applicants' 47 U.S.C. §251(f)(1) exemption, (d) requiring Applicants to prove that economic

burdens caused by MCI's interconnection request must be "beyond the economic burdens typically associated with efficient competitive entry," (e) determining that MCI is a "telecommunications carrier" that will provide "telecommunications services" under 47 U.S.C. §153 and 47 U.S.C. §251(c), (f) deferring to a company-specific arbitration questions concerning economic impact of interconnection, undue economic burden, and whether such interconnection is in the public interest, convenience, and necessity, (g) lifting the stay of the nine-month timeframe established in 47 U.S.C. §252, and (h) directing that negotiations occur between the parties. A memorandum in support is attached to the application for rehearing.

(4) On March 7, 2005, MCI responded to Applicants' application for rehearing by filing a memorandum contra. MCI contends that (a) the record supports the Commission's conclusions that MCI's BFR will not result in an undue economic burden for Applicants, (b) the BFR complies with universal service principles and is in the public interest, (c) the Commission did not err in focusing upon economic burdens beyond those typically associated with efficient competitive entry, (d) the Commission correctly determined the MCI is a "telecommunications carrier" for purposes of MCI's BFR, (e) the Commission correctly determined the specific issues concerning undue economic burdens could be addressed in individual arbitrations, and (f) the stay of the nine-month time frame was properly lifted as of January 26, 2005.

(5) On March 23, 2005, the Commission granted rehearing by stating that Applicants had provided sufficient reason to warrant further consideration of matters specified in Applicants' February 25, 2005, filing.

(6) Applicants' first assignment of error states that the Commission incorrectly assigned to Applicants the burden of proof for continuing the 47 U.S.C. §251(f)(1) exemption or for suspending or modifying obligations under 47 U.S.C. §251(f)(2). Applicants assert that the burden actually falls on MCI. Second, Applicants note that the Commission incorrectly found that Applicants did not meet the burden assigned to them. Third, Applicants argue that because MCI failed to meet the burden to which it should have been assigned, the

Commission incorrectly terminated Applicants' 47 U.S.C. §251 (f)(1) exemption.

In explanation, Applicants observe that when the Federal Communications Commission (FCC) first issued regulations implementing the Telecommunications Act of 1996 (the Act) the FCC adopted 47 C.F.R. §51.405.[3] Applicants observe that 47 C.F.R. §51.405 was vacated by the Eighth Circuit Court of Appeals (Eighth Circuit) in *Iowa Utils. Bd. v. Fed. Communications Comm'n*, 120 F.3d 753, 792 (8th Cir. 1997), *rev'd in part, AT&T Corp. v. Iowa Utils. Bd.* 525 U.S. 366 (1999)(*"Iowa I"*), on the grounds that the FCC lacked jurisdiction under the Act to enact the regulations.

Applicants further observe that (a) on appeal the Supreme Court reversed and remanded the case to the Eighth Circuit, and (b) on remand the Eighth Circuit again vacated most of 47 C.F.R. §51.405 in *Iowa Utils. Bd. v. Fed. Communications Comm'n*, 219 F.3d 744, 762 (8th Cir. 2000), *rev'd in part on other grounds, Verizon Communications v. Fed. Communications Comm'n*, 535 U.S. 467 (2002)(*"Iowa II"*). Applicants emphasize that *Iowa II* states that language in the Act demonstrates that a rural telephone company has a continuing exemption unless and until the requesting party proves the exemption should be terminated. Thus, say Applicants, the court vacated 47 C.F.R. §51.405(a), (c), and (d), all of which concern the burden of proof required to terminate a rural exemption. Applicants add that in the court's opinion the statute's plain meaning requires that

---

3 Applicants note that 47 C.F.R. §51.405 contains these provisions:

(a) Upon receipt of a bona fide request for interconnection, services, or access to unbundled network elements, a rural telephone company must prove to the state commission that the rural telephone company should be entitled, pursuant to section 251(f)(1) of the Act, to continued exemption from the requirements of section 251(c) of the Act.

(b) A LEC [local exchange carrier] with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide must prove to the state commission, pursuant to section 251(f)(2) of the Act, that it is entitled to a suspension or modification of the application of a requirement or requirements of section 251(b) or 251(c) of the Act.

(c) In order to justify continued exemption under section 251(f)(1) of the Act once a bona fide request has been made, an incumbent LEC must offer evidence that the application of the requirements of section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

(d) In order to justify a suspension or modification under section 251(f)2) of the Act, a LEC must offer evidence that the application of section 251 (b) or 251 (c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

the requesting party comply with the three prerequisites in 47 C.F.R. §251(f)(1) to justify terminating the otherwise continuing rural exemption. According to Applicants, the Supreme Court reversed *Iowa II* on grounds not concerning the burden of proof for a rural exemption; as a result, after *Iowa II* "those portions of 47 C.F.R. §51.405 dealing with burden of proof, upon which the Commission's Order relied, were null and void." Applicants also note that the FCC's 2001 Rural Exemption Order acknowledges the Eighth Circuit's holding in *Iowa II*.[4] On this basis, say Applicants, the burden of proof is on MCI to justify termination of the exemptions, while Applicants carry the burden of going forward.

Applicants conclude that they have "more than met" their "limited" burden of going forward by adding more information to their applications and petitions on November 15, 2004, while MCI failed to prove that its request for interconnection is not unduly economically burdensome and is consistent with universal service principles.[5]

(7) In response to Applicants' first through third assignments of error, MCI agrees that the FCC's "burden of proof" rule in 47 C.F.R. §51.405 was indeed vacated by *Iowa II* and that the FCC was asked to modify the rule in *ACS of Alaska*. MCI also observes that in *ACS of Alaska* the FCC declined to codify a new rule because the Eighth Circuit had determined that the plain meaning of the statute is clear. Thus, says MCI, the only guidance from the FCC is that state commissions must look to the statutory language of 47 U.S.C. 251(f)(1)(B) in determining whether to terminate rural exemptions; in MCI's opinion, the Commission did just that in its January 26, 2005 Order.

MCI then notes that, under 47 U.S.C. 251(f)(1)(B), Applicants admit that they have the "burden of going forward" in supporting continuation of the rural exemption, and that MCI has the "burden of persuading" the Commission that MCI's request is not unduly economically burdensome and is consistent with universal service principles. MCI asserts that the Commission's decision is consistent with this approach, because the Commission Order concluded that (a) Applicants

---

4 Applicants refer to *In the Matter of ACS of Alaska et al. Petition to Amend Section 51.405 of the Commission's Rules* CC Docket 96-98, 16 FCC Rcd 15672; 2001 FCC Lexis 4628 (rel. Aug. 27, 2001) ("*ACS of Alaska*").

5 Applicants note that they consider MCI's BFR to be technically feasible.

"have not demonstrated that MCI's request for physical interconnection via DS3 access, in and of itself, will result in undue economic burden beyond the economic burdens typically associated with efficient competitive entry," and (b) MCI's BFR will promote universal service requirements and the public interest, convenience, and necessity by providing an alternative for rural customers. In sum, says MCI, even if the Commission incorrectly believed that Applicants must sustain the burden of "proof" rather than the burden of "production," the Commission Order correctly (a) summarized the positions of MCI and Applicants regarding undue economic burden resulting from MCI's BFR and (b) determined that the Applicants' rural exemption should not be continued.

(8) The Commission grants rehearing concerning Applicants' first and second assignments of error. The Commission agrees with Applicants that (a) the FCC's "burden of proof" rule in 47 C.F.R. §51.405 was vacated by *Iowa II*, (b) *Iowa II* requires the party making a BFR to prove that the request complies with 47 U.S.C. 251(f)(1) before a state commission can terminate the rural exemption, and (c) having erroneously assigned to Applicants the burden of proof under 47 U.S.C. 251(f)(1), the Commission further erred when it found that Applicants had not met that burden.

(9) The Commission denies rehearing on Applicants' third assignment of error. The Commission disagrees with Applicants that MCI failed to prove that its BFR is not unduly economically burdensome and is consistent with universal service requirements.[6] Concerning undue economic burden, the Commission notes that in MCI's December 15, 2004 response to the amended applications and petitions, MCI asserts that it will pay for "submission of LNP orders (a non-recurring service order charge), monthly recurring charges for trunk servicing, interconnection transport charges, traffic transit charges and E911/911 trunking charges (if the ILEC is a PSAP provider), all pursuant to the terms of the yet-to-be-negotiated interconnection agreement." In the same filing, MCI adds that although it has "proposed a bill and keep intercarrier compensation process, the parties can discuss other cost-based methods of compensation." In sum, while details of MCI's financial compensation to Applicants are not yet

6 As already noted above, neither MCI nor Applicants dispute that MCI's BFR is technically feasible.

finalized, MCI has indicated the types of interconnection and services for which Applicants will be paid.

As for compatibility of MCI's BFR with universal service requirements, the Commission believes that MCI's entry into Applicants' territories would provide rural customers with additional choice in telecommunications service and would not conflict with universal service requirements.

Finally, as indicated in the Commission Order, the Commission is aware of the difficulties that Applicants face in an increasingly competitive telecommunications environment. However, the Commission also reminds Applicants of its prior orders which indicated that its approval of a CLEC subsidiary or "edge out" authority for certain Applicants would be considered when evaluating a request to continue the rural exemption.[7] Thus, while the Commission must follow the requirements of 47 U.S.C. §251(f)(1) in determining whether to terminate a rural exemption, Applicants must realize that their expansion into various ILEC territories will be considered by the Commission when it evaluates the impact of MCI's BFR. The Commission concludes that termination of Applicants' rural exemption is justified.

---

7 For example, the Commission stated its belief "that TSC should be precluded from claiming a rural exemption under 47 U.S.C. §251(f) by creation of its CLEC subsidiary, TSC Communications, Inc." See Case No. 01-2381-TP-UNC, *In the Matter of the Notice and Alternative Application and Petition of Telephone Service Company in Accordance with Section II.A.2.b of the Local Service Guidelines.* Similarly, when the Commission granted TSC's request for a waiver of the requirement that it form or operate a separate subsidiary in order to serve in certain incumbent local exchange carrier (ILEC) exchanges, the Commission stated that "it will consider approval of this application" when ruling on any rural exemption application from TSC. See Case No. 01-2576-TP-UNC, *In the Matter of the Application of Telephone Service Company for Authority to Expand Its Service Area and for Waiver of the Commission's Rules Regarding Local Competition in Ohio.* The Commission provided similar notice when Germantown sought the same type of waiver in Case No. 00-2346-TP-UNC, *In the Matter of the Application of the Germantown Independent Telephone Company for Authority to Expand Its Service Area and for A Waiver of the Commission's Rules Regarding Local Competition in Ohio.* Finally, when Champaign sought and received Commission approval to create a CLEC affiliate and to "edge out" into ILEC territories, the Commission again indicated that such approvals would be considered if Champaign later pursued continuation of a rural carrier exemption. See Case No. 01-10-TP-ACE, *In the Matter of the Application of CT Communications Network, Inc. for Authority to Provide Local Exchange Telephone Service, as well as Approval of a Waiver of Certain Commission Guidelines, and Approval of an Operating and Maintenance Agreement,* and Case No. 03-1571-TP-UNC, *In the Matter of the Application of The Champaign Telephone Company to Expand its Service Area.*

(10) In a fourth assignment of error, Applicants assert that the Commission erred when it required Applicants to prove that economic burdens of the BFR must be "beyond the economic burdens typically associated with efficient competitive entry." According to Applicants, in *Iowa II* the Eighth Circuit clearly rejected such a high standard of economic burden and determined that under 47 U.S.C. §251(f) a state commission must assess the full economic burden on an ILEC making a 47 U.S.C. §251 request. As noted by Applicants, the Eighth Circuit stated that if Congress had wanted state commissions to consider only the economic burden that exceeds the burden ordinarily imposed on small or rural ILECs by a competitor's requested entry, Congress would have said so. Instead, Applicants add, the Eighth Circuit said that the language chosen by Congress considers the entire economic burden that a BFR imposes, rather than only a discrete part.

In sum, argue Applicants, while MCI has the burden to prove that interconnection would not be unduly economically burdensome, the Commission is obligated to judge results against the proper standard. Thus, if any economic injury is found, assert Applicants, the Commission must provide broad protection and the 47 U.S.C. §251(f)(1) exemption must continue. Applicants believe that they provided the Commission with "more than sufficient evidence to demonstrate the economic injury that would result" from MCI's BFR. Applicants emphasize that they will receive "paltry, if any, compensation from MCI" and no compensation from Time Warner. Thus, conclude Applicants, MCI failed to prove that its BFR will not be "unduly economically burdensome," and rehearing should be granted.

(11) In response to Applicants' fourth assignment of error, MCI argues that the Commission evaluated the "full burden" placed on Applicants by MCI's BFR when determining whether such a burden constituted an "undue economic burden" under 47 U.S.C. §251. Specifically, argues MCI, Applicants "made no showing that the form of interconnection sought by MCI places an *undue* economic burden on them" (emphasis in original). Concerning matters of compensation associated with MCI's BFR, MCI notes that the Commission Order stated that if "Applicants have specific arguments and supporting documentation concerning an undue economic burden associated with MCI's BFR or a particular regulatory

requirement, the Commission may consider such arguments and information in the context of a company-specific arbitration." Thus, concludes MCI, the Commission evaluated this information and found no "undue economic burden" to justify continuing Applicants' rural exemption.

In addition, notes MCI, the Commission analyzed and rejected Applicants' "simplistic formula for calculating revenue losses." MCI observes that the Commission agreed with MCI that Applicants' calculations were "inaccurate and misleading" because (a) penetration rates were applied to Applicants' entire customer bases, rather than the universe of Time Warner customers, (b) certain customer costs are not incurred when a customer is lost to a competitor, and (c) assumed usage rates were very high. Most importantly, asserts MCI, even if Applicants lose customers and associated revenues to a competitor, "it does not necessarily follow that the other customers must make up the difference absent a ratemaking proceeding." Besides, says MCI, competition has provided Applicants "with other revenue-enhancing opportunities. . . ."

MCI also asserts that its discussion of Applicants' competitive activities was not rebutted by Applicants' criticisms, and concludes that the Commission correctly determined that the "broad protections" of the rural exemptions should not be continued. MCI notes that the Commission agreed with MCI that the revenue losses faced by Applicants were not unique to Time Warner's VoIP services. Indeed, observes MCI, Applicants have competed with wireless providers for years, and wireless carriers are not subject to the Commission's Minimum Telephone Service Standards (MTSS). MCI adds that any concerns that Time Warner would cross-subsidize and engage in below-cost pricing can apply equally to all competitors using any type of technology. Also, says MCI, the Commission decision to not allow a blanket rural exemption is firmly based on the Commission's evaluation of 47 U.S.C. §251(f) standards.

Finally, adds MCI, Applicants would like the Commission to believe that a showing of "any" economic burden is equivalent to an "undue" economic burden. MCI notes that the dictionary definition of "undue" is "exceeding or violating propriety or fitness." Instead, says MCI, the information presented by Applicants did not provide the Commission with a basis to find

that MCI's BFR would pose an economic burden that exceeds the burdens placed by other requesting carriers. Thus, says MCI, the Commission correctly determined that MCI's BFR is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. §254.

(12) The Commission grants rehearing on Applicants' fourth assignment of error. Applicants correctly state that *Iowa II* requires the Commission to assess the full economic burden on an ILEC, not just the burden in excess of what is ordinarily imposed on ILECs by a competitor's requested efficient entry. Still, even when measured by this standard, the Commission believes that termination of Applicants' rural exemption is justified, as discussed in Finding (9) above. Further, the Commission disagrees with Applicants' assertions that "if any economic injury is found, the Commission is to afford 'broad protection' and the exemption must continue," and that Applicants "provided the Commission with more than sufficient evidence to demonstrate the economic injury that would result from the interconnection requested by MCI." As noted in the Commission Order in Finding (10), Applicants have not provided evidence that MCI's request for physical interconnection will result in an undue economic burden. Any evidence submitted by Applicants concerning alleged economic burden was associated with potential loss of customers -- a possible outcome of competition, but not an economic burden directly associated with what MCI seeks in its BFR.

(13) As a fifth assignment of error, Applicants argue that the Commission incorrectly determined that with respect to MCI's BFR it is a "telecommunications carrier" that will provide "telecommunications services" within the meaning of 47 U.S.C. §153 and 47 U.S.C. §251(c). In explanation, Applicants observe that (a) 47 U.S.C. §251(a) only requires Applicants to interconnect with facilities and equipment of other "telecommunications carriers" and (b) 47 U.S.C. §251(c)(2) requires ILECs to provide, for the facilities and equipment of any requesting "telecommunications carrier," interconnection with the LEC's network for the transmission and routing of "telephone exchange and exchange access" at any technically feasible point within the carrier's network. Thus, Applicants conclude that they are only obligated to interconnect with "telecommunications carriers" and only for the transmission and routing of "telephone exchange and exchange access."

Applicants also observe that under 47 U.S.C. §153, a "telecommunications carrier" means "any provider of telecommunication services" and that a "telecommunications service" means the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." From this, Applicants further conclude that if a carrier is not providing "telecommunications service" it is not a "telecommunications carrier."

Applying the foregoing reasoning to MCI's BFR, Applicants assert that MCI is not providing "telecommunications services" as statutorily defined and thus is not acting as a "telecommunications carrier." Applicants add that because 47 U.S.C. §251 obligations extend only to "telecommunications carriers" Applicants have no statutory obligation to interconnect with MCI.

Applicants note that the Commission Order "decided that MCI is a provider of telecommunications services merely because MCI is a certificated carrier in the state of Ohio." In Applicants' opinion, regardless of whether MCI is certificated by the Commission, Applicants are obligated to enter into negotiations only if MCI proposes here to act as a "telecommunications carrier." Applicants assert that MCI is not proposing this in its BFR but rather proposes "to act as little more than a conduit, porting numbers to Time Warner, an uncertificated provider of telecommunications services." Applicants contend that MCI's proposed actions do not conform with the 47 U.S.C. §153 definition of providing "telecommunications service." Thus, conclude Applicants, MCI is not proposing to act as a "telecommunications carrier" for purposes of its BFR and lacks standing to require interconnection negotiations of Applicants. Applicants urge the Commission to reconsider whether MCI is a telecommunications carrier "before negotiations commence, before the expense of doing so is incurred, and necessarily before arbitration" (emphasis in original).

(14) In response to the fifth assignment of error, MCI asserts that while the Commission observed that MCI is certificated in Ohio and is thus eligible to submit a BFR, the Commission added that MCI's proposed interconnection to Applicants' networks places MCI in the same position as other intermediate carriers

whose interconnections terminate traffic "to and from each network and across networks." MCI notes that it will submit orders to Applicants on Time Warner's behalf for the purpose of porting customer numbers from Applicants' switches to MCI's switches and that in so doing it will be a "telecommunications carrier" that is entitled to interconnection for the "transmission and routing of telephone exchange service and exchange access."

MCI emphasizes that 47 U.S.C. §251 "contemplates that carriers will act as intermediaries in carrying communications in addition to originating and terminating traffic on each end of the call." In MCI's opinion, 47 U.S.C. §251(c)(2) "is carefully worded to encompass all of those functions." Further, says MCI, 47 U.S.C. §251(a) requires all telecommunications carriers to interconnect their networks "directly or indirectly"; in MCI's opinion, that means that networks may be connected via a third carrier providing transit service. MCI also notes that under 47 U.S.C. §153 "telephone exchange service" is defined to include (a) service within a telephone exchange or connected system of exchanges or (b) comparable service provided through a series of switches, transmission equipment or other facilities by which a subscriber can originate or terminate a telecommunications service. MCI concludes that such arrangements fall within 47 U.S.C. §251(c)(2)(A).

MCI reemphasizes that for Applicants to simply label MCI as a "third-party tandem provider" does not mitigate MCI's role in the interconnection of networks for the purpose of providing access to the public switched telephone network, nor Applicants' duty to provide interconnection for transit purposes. In MCI's opinion, if Applicants prevail on this issue Applicants would have no duty to provide interconnection for transit purposes.

Finally, MCI notes Applicants' concern that the issue of whether MCI is a "telecommunications carrier" cannot be deferred to arbitration. In MCI's opinion, there is no language in the Commission Order indicating that the Commission intended this issue to be reviewed during arbitration.[8]

(15) The Commission denies rehearing on Applicants' fifth assignment of error. The Commission agrees with Applicants that 47 U.S.C. §251(a)(1) and (c)(2) require Applicants to interconnect with other "telecommunications carriers" and that 47 U.S.C. §153 defines a "telecommunications carrier" as "any provider of telecommunications services." The Commission also observes, as do Applicants, that the 47 U.S.C. §153 definition of "telecommunications service," is "the offering of telecommunications for a fee directly to the public, or to classes of users as to be effectively available to the public, regardless of the facilities used." Applying this definition to MCI and its BFR, the Commission notes that MCI will doubtless collect a fee for providing telecommunications via interconnection with Applicants. Further, MCI's arrangements with Time Warner will make the interconnection and services that MCI negotiates with Applicants "effectively available to the public, regardless of the facilities used."

The Commission, then, considers it appropriate to terminate Applicants' rural exemption because MCI is a telecommunications carrier that is seeking to order what it needs to offer telecommunications services. The Commission will not determine, at this point, the prices, terms, and conditions of what MCI specifically needs from Applicants to provide telecommunication services; such a determination is appropriate following the presentation of evidence in arbitration, not following the submission of applications and petitions to continue the rural exemption.

---

8 Specifically, MCI notes that the Commission Order stated: "Therefore, should Applicants have specific arguments and supporting documentation concerning an undue economic burden associated with MCI's BFR or a particular regulatory requirement, the Commission may consider such arguments and information in the context of a company-specific arbitration. *Such arguments and information should not repeat the contentions of Applicants in the September 28, 2004, application and petition and accompanying November 15, 2004, amendments and supplements; rather, the arguments and information should be narrowly tailored to specific requirements raised through an arbitration request or regulatory requirement*" (emphasis added by MCI). In sum, says MCI, the Commission apparently advised Applicants specifically not to raise this issue in arbitration.

(16) In a sixth assignment of error, Applicants assert that the Commission incorrectly deferred to a company-specific arbitration the questions of whether (a) MCI's BFR will cause significant adverse economic impact on users of telecommunications services generally, (b) Applicants will thereby encounter undue economic burden, and (c) permitting MCI's interconnection is consistent with the public interest, convenience, and necessity.

In Applicants' opinion, the Commission Order did not address (a) the impact of deploying VoIP service in Applicants' service territories and (b) the effect on Applicants' operations and ability to serve their carrier of last resort customers. While noting that the Commission stated that it is aware of special issues faced by Applicants in a competitive telecommunications environment, Applicants assert that the Commission failed to resolve such issues and instead deferred arguments and documentation concerning such matters to arbitration. Applicants argue that such a deferral will result in an additional economic burden, specifically the expense of preparing for an arbitration that they may have no obligation to engage in.

Finally, Applicants object to language in the Commission Order stating that at arbitration Applicants should not repeat contentions made in previously filed documents. Applicants believe that such a prohibition is unfair, because if they must arbitrate the same issues they will necessarily be relying on the same evidence.

(17) Regarding the sixth assignment of error, MCI again asserts that Applicants have somehow incorrectly concluded that the Commission deferred certain issues to arbitration, thus placing additional burdens on Applicants.

In MCI's opinion, the Commission Order clearly indicates that the arguments raised in these proceedings should not be raised again.[9] MCI notes that the Commission Order already states that MCI's BFR will not result in an undue economic burden for Applicants or cause an adverse impact on telecommunications users significant enough to justify a blanket exemption from 47 U.S.C. §251 interconnection

9 MCI again refers to the language from the Commission Order quoted in Footnote 8 above.

obligations. Yet, says MCI, Applicants interpret such language as ordering Applicants to reargue that interconnection will result in an undue burden for them. MCI asserts that the Commission directed nothing of the sort; rather, says MCI, the Commission intends that Applicants raise matters such as compensation in individual negotiations. In sum, says MCI, the Commission decided that while no blanket rural exemption will be granted, Applicants may still make specific arguments regarding how the details of MCI's BFR will affect Applicants. MCI considers this to be fair and notes that the Commission has taken a similar approach in other requests for rural exemptions.

Regarding VoIP issues associated with Time Warner's roll out of service, MCI notes that the FCC stated that the roll out of internet protocol-enabled services offered by cable companies such as Time Warner "should not be impeded by a patchwork of state regulations" that could prevent customers from receiving the benefits of competition. MCI emphasizes that the "patchwork of state regulations" to which VoIP carriers are not subject includes state regulations such as MTSS and Competitive Retail Service Rules. In MCI's opinion, the Commission correctly determined that while the VoIP issues raised by The Office of the Ohio Consumers' Counsel (OCC) are not insignificant, such issues should be handled in Case No. 03-950-TP-COI, *In the Matter of the Commission's Investigation into Voice Services Using Internet Protocol.*

Finally, says MCI, issues concerning "carrier of last resort" raised by Applicants were part of the "economic burden" argument that the Commission found to be insufficient to justify a blanket exemption. Thus, says MCI, such issues should not become part of the company-specific arbitration. In sum, concludes MCI, the Commission did not err in directing that Applicants may during arbitration only raise economic burden issues other than those that have already been reviewed and rejected by the Commission.

(18) The Commission denies rehearing on Applicants' sixth assignment of error. By indicating that it would "consider in the context of a company-specific arbitration" further arguments of Applicants concerning undue economic burden, the Commission was not deferring a decision on whether Applicants would incur such a burden. The Commission had

already made this determination in the Commission Order. Rather, the Commission was acknowledging, as MCI asserts, that while a blanket rural exemption would not be granted, Applicants could during arbitration make specific arguments as to how the details of MCI's BFR would impact Applicants.

(19) In a seventh and final assignment of error, Applicants observe that the Commission Order concluded that the nine-month timeframe established in 47 U.S.C. §252 had been tolled as of September 28, 2004, the date on which Applicants filed applications and petitions. Applicants then contend that the Commission erred when it lifted the stay as of January 26, 2005, and in directing negotiations. In explanation, Applicants argue that the Commission should have found that Applicants are exempt under 47 U.S.C. §251 from an obligation to interconnect or engage in negotiation. Applicants add that given the Commission's "unlawful deferral of central issues that should have been decided" in the Commission Order, restarting the 47 U.S.C. §252 clock "was equally unlawful."

(20) In response to the seventh assignment of error, MCI contends that because the Commission did not err in deciding that the criteria of 47 U.S.C. §251(f) had not been met, it follows that the stay of the statutory timeframe for negotiations was appropriately lifted on January 26, 2005.

MCI adds that Applicants have not commenced negotiations since issuance of the Commission Order because Applicants cited the likelihood of filing for rehearing. MCI urges the Commission to find that there will be no additional stays of the time clock due to Applicants' unilateral actions.

(21) The Commission denies rehearing of Applicants' seventh assignment of error. As stated in Finding (12) of the Commission Order, 47 U.S.C. 251(f)(1)(B) authorizes a state commission upon termination of the rural exemption to establish an implementation schedule for compliance with the BFR. Thus, the Commission was following its authority under federal law; it had determined that Applicants' rural exemption should end and was establishing an implementation schedule for MCI's BFR. Further, while MCI's BFR started the "time clock" running, it is the Commission's opinion that the "time clock" was in effect stopped by (a) Applicants' September 28, 2004, filing of applications and petitions to continue the rural

exemption and (b) the apparent lack of negotiations by Applicants in response to MCI's BFR. Thus, the Commission reasserts that the nine-month time frame established in 47 U.S.C. §252 was tolled as of September 28, 2004, when the applications and petitions were filed, and that the stay has been lifted and the parties directed to commence negotiations as of January 26, 2005.

It is, therefore,

ORDERED, That rehearing is granted on Applicants' first, second, and fourth assignments of error, and rehearing is denied for Applicants third, fifth, sixth, and seventh assignments of error. It is, further,

ORDERED, That the nine-month interconnection agreement timeframe set forth in Finding (12) of the Commission Order remains effective. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

Clarence D. Rogers, Jr.

JML:ct

Entered in the Journal

APR 13 2005

Reneé J. Jenkins
Secretary

STATE OF IOWA

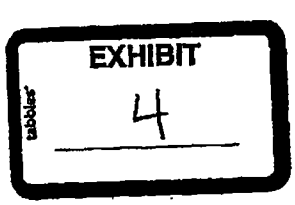
DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE ARBITRATION OF: SPRINT COMMUNICATIONS COMPANY L.P., Petitioning Party, vs. ACE COMMUNICATIONS GROUP, CLEAR LAKE INDEPENDENT TELEPHONE COMPANY, FARMERS MUTUAL COOPERATIVE TELEPHONE CO. OF SHELBY, FARMERS TELEPHONE COMPANY, FARMERS MUTUAL TELEPHONE COMPANY, GRAND RIVER MUTUAL TELEPHONE CORPORATION, HEART OF IOWA COMMUNICATIONS COOPERATIVE, HEARTLAND TELECOMMUNICATIONS COMPANY OF IOWA d/b/a HICKORYTECH, HUXLEY COMMUNICATIONS, IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM f/k/a GTE MIDWEST, KALONA COOPERATIVE TELEPHONE, LA PORTE CITY TELEPHONE COMPANY, LEHIGH VALLEY COOPERATIVE TELEPHONE ASSOCIATION, LOST NATION-ELWOOD TELEPHONE COMPANY, MINBURN TELECOMMUNICATIONS, INC., ROCKWELL COOPERATIVE TELEPHONE ASSOCIATION, SHARON TELEPHONE, SHELL ROCK TELEPHONE COMPANY d/b/a BEVCOMM c/o BLUE EARTH VALLEY TELEPHONE COMPANY, SOUTH CENTRAL COMMUNICATIONS, INC., SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY, SWISHER TELEPHONE COMPANY, VAN BUREN TELEPHONE COMPANY, INC., VENTURA TELEPHONE COMPANY, INC., VILLISCA FARMERS TELEPHONE COMPANY, WEBSTER CALHOUN COOPERATIVE TELEPHONE ASSOCIATION, WELLMAN COOPERATIVE TELEPHONE ASSOCIATION, and WEST LIBERTY TELEPHONE COMPANY d/b/a LIBERTY COMMUNICATIONS, Responding Parties.	DOCKET NO. ARB-05-2

ORDER REOPENING DOCKET FOR RECONSIDERATION AND SETTING PROCEDURAL SCHEDULE

(Issued August 19, 2005)



On March 31, 2005, Sprint Communications Company L.P. (Sprint) filed a petition with the Utilities Board (Board) requesting arbitration of certain terms and conditions of a proposed interconnection agreement between Sprint and several rural incumbent local exchange carriers,[1] hereinafter referred to as the RLECs. The petition was filed pursuant to § 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 101-104, 110 Stat. 56 (1996) (hereinafter referred to as the "Act").

On April 15, 2005, the RLEC Group[2] filed a motion to dismiss and a response to the petition. Also on April 15, 2005, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a substantially similar motion to dismiss and response to the petition for arbitration.

On May 26, 2005, the Board issued an order granting the motions to dismiss based on Sprint's status, finding that Sprint does not intend to offer its proposed service in the RLEC exchanges to any party other than its private business partners, pursuant to individually-negotiated contracts. As a result, the Board found that Sprint

[1] Ace Communications Group, Clear Lake Independent Telephone Company, Farmers Mutual Cooperative Telephone Co. of Shelby, Farmers Telephone Company, Farmers Mutual Telephone Company, Grand River Mutual Telephone Corporation, Heart of Iowa Communications Cooperative, Heartland Telecommunications Company of Iowa d/b/a HickoryTech, Huxley Communications, Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom f/k/a GTE Midwest, Kalona Cooperative Telephone, La Porte City Telephone Company, Lehigh Valley Cooperative Telephone Association, Lost Nation-Elwood Telephone Company, Minburn Telecommunications, Inc., Rockwell Cooperative Telephone Association, Sharon Telephone, Shell Rock Telephone Company d/b/a BEVCOMM c/o Blue Earth Valley Telephone Company, South Central Communications, Inc., South Slope Cooperative Communications Company, Swisher Telephone Company, Van Buren Telephone Company, Inc., Ventura Telephone Company, Inc., Villisca Farmers Telephone Company, Webster Calhoun Cooperative Telephone Association, Wellman Cooperative Telephone Association, and West Liberty Telephone Company d/b/a Liberty Communications.

[2] Being all of the RLECs except Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom.

would not make its proposed services available on a common carrier basis, therefore, would not be a common carrier for purposes of this docket and, therefore, was not entitled to invoke the negotiations and arbitration process as a "telecommunications carrier."

On June 23, 2005, Sprint filed a "Complaint for Declaratory and Injunctive Relief" in the United States District Court for the Southern District of Iowa, naming the Board and the Board members as defendants and seeking to overturn the Board's May 26, 2005, order.[3] During the course of those judicial proceedings, the parties to those proceedings (i.e., Sprint and the Board) concluded that Sprint may have evidence and argument that was not previously presented to the Board that could be relevant to the Board's May 26, 2005, decision. Accordingly, on August 12, 2005, Sprint and the Board, acting through counsel, filed an agreement stipulating to the entry by the Court of an order staying the judicial proceedings for 60 days and remanding the matter to the Board for the duration of the stay to give the Board an opportunity to hear evidence and argument and reconsider its May 26, 2005, order.

On August 18, 2005, the Court approved the stipulation and stayed its proceedings.

Pursuant to the stipulation, the Board is to enter a procedural order establishing a schedule for reconsideration. If the Board ultimately vacates its May 26, 2005, order, Sprint will request dismissal of the action in Court. In the absence of such an order, the stay shall automatically expire on the 61st day after

[3] "Sprint Communications Company L.P. vs. Iowa Utilities Board, et al." Case No. 4:05-CV-354.

entry of the Court's order approving the stipulation, returning the matter to the judicial forum.

The parties to the case in court further stipulated and agreed that all statutory time deadlines set forth in the federal statutes relating to interconnection arbitration proceedings (47 U.S.C. §§ 251 and 252) for determination of Sprint's request for interconnection and arbitration have been tolled from May 26, 2005, until the date, if any, that the Board enters an order vacating its May 26, 2005, order of dismissal and directing that further proceedings take place on Sprint's request for arbitration.

Accordingly, the Board is issuing this order granting reconsideration of its May 26, 2005, dismissal order in this docket and setting a procedural schedule for that reconsideration. The Board notes that the available time is very limited, so it will shorten the time for responding to discovery requests to five days and will encourage the parties to work together to complete discovery as quickly and efficiently as possible, including the use of depositions and other discovery methods that are not typically a part of Board proceedings.

IT IS THEREFORE ORDERED:

1. The Board will reopen this docket for purposes of reconsideration, on its own motion, of the May 26, 2005, dismissal order in this docket.

2. The following procedural schedule is established:

   a. On or before August 25, 2005, Sprint shall file testimony and exhibits in support of its position regarding the Board's reconsideration of its May 26, 2005, dismissal order.

b. On or before September 8, 2005, the RLECs may file testimony and exhibits in support of their position.

c. On or before September 15, 2005, Sprint may file testimony and exhibits in reply to the RLECs.

d. A hearing shall be held beginning at 9 a.m. on September 30, 2005, for the purpose of receiving testimony and the cross-examination of all testimony. The hearing shall be held in the Iowa Utilities Board's Hearing Room, 350 Maple Street, Des Moines, Iowa. The parties shall appear one-half hour prior to the time of the hearing for the purpose of marking exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

e. Oral argument in lieu of written briefs may be held at the end of the hearing on September 30, 2005.

f. The Board shall issue a final order on reconsideration on or before October 17, 2005.

3. In the absence of objection, all underlying workpapers shall become a part of the evidentiary record of these proceedings at the time the related testimony and exhibits are entered into the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination that have not been previously filed shall become a part of the evidentiary record of these proceedings. The party making

reference to the data request shall file an original and six copies of the data request and response with the Board at the earliest possible time.

5. The time for responding to data requests is shortened to five days.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Margaret Munson
Executive Secretary, Deputy

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 19th day of August, 2005.

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN RE:	
SPRINT COMMUNICATIONS COMPANY L.P.'S PETITION FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT.	**APPLICATION NO: C-3429**

SPRINT COMMUNICATIONS COMPANY L.P.'S PROPOSED ORDER

By the Commission:

I. INTRODUCTION

Pursuant to Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 *et seq.*) ("the Act"), Sprint Communications Company L. P. ("Sprint") filed on May 20, 2005 its Petition for Arbitration before the Nebraska Public Service Commission ("the Commission") with respect to certain unresolved issues associated with the proposed interconnection agreement between Sprint and Southeast Nebraska Telephone Company ("SENTCO"). On May 31, 2005, SENTCO filed its Motion for Commission to Act as Arbitrator in this proceeding. On June 14, 2005, the Commission entered its Order granting SENTCO's Motion for Commission to Act as Arbitrator. On June 17, 2005, SENTCO filed its Motion to Dismiss Or, in the Alternative, Response to Petition for Arbitration ("Motion to Dismiss"). On June 28, 2005, the Commission issued its Planning Conference Order establishing a procedural schedule for the proceeding and indicating, among other things, that Sprint was not required to file a separate response to SENTCO's Motion to Dismiss, and the Commission would address the Motion to Dismiss and any opposition thereto as part of its decision in this matter. On August 10, 2005, a hearing was held before the Commission, at which both parties presented evidence and argument. According to the Planning Conference Order, both parties' post-hearing briefs and proposed orders are due on September 2, 2005.

II. BACKGROUND

SENTCO is a facilities-based incumbent local exchange carrier ("LEC") providing local exchange services in the Falls City, Nebraska area, subject to the jurisdiction of the Commission. Sprint is an interexchange telecommunications carrier authorized to provide interexchange services throughout Nebraska. In addition, Sprint is a certificated competitive local exchange carrier in the state of Nebraska (including SENTCO's exchanges) pursuant to the Commission's Order in Docket No. C-3204.

Sprint seeks to interconnect and exchange traffic with SENTCO pursuant to Sections 251(a) and (b) of the Act. The issues in this arbitration proceeding stem from SENTCO's assertion that the scope of the parties' proposed interconnection agreement should exclude customers of Time Warner Cable ("TWC"). As set forth more fully below, the parties' dispute manifests itself primarily in two areas of the proposed interconnection agreement: the definition of "End User or End User Customer" and the definition of "Reciprocal Compensation."

Sprint seeks interconnection with SENTCO to offer what it describes as competitive alternatives in telecommunications services to consumers in SENTCO's territory through a business model in which Sprint provides telecommunications services to other competitive service providers seeking to offer local voice service. With regard to Nebraska, Sprint has entered into a business arrangement with Time Warner Cable ("TWC") whereby TWC will offer local and long distance voice services in competition with SENTCO.[1] Under the arrangement between TWC and Sprint, TWC is responsible for marketing and sales, end-user billing, customer service, and the "last mile" portion of the network which includes the TWC hybrid fiber coax facilities, the same facilities it uses to provide video and broadband Internet access. Service is provided in TWC's name. Sprint provides the public switched telephone network ("PSTN") interconnection utilizing Sprint's switch (TWC does not own or provide its own switching), competitive LEC status, and the interconnection agreements it has or is negotiating with incumbent LECs. Sprint also uses existing numbers or acquires new numbers, provides all number administration functions including filing of number utilization reports with the North American Numbering Plan Administrator, and performs the porting function whether the port is from the incumbent LEC or a competitive LEC to Sprint or vice versa. Sprint is also responsible for all inter-carrier compensation, including exchange access and reciprocal compensation. Sprint provisions 9-1-1 circuits to the appropriate Public Safety Answering Points ("PSAP") through the incumbent LEC selective routers, performs 9-1-1 database administration, and negotiates contracts with PSAPs where necessary. Finally, Sprint places TWC directory listings in the incumbent LEC or third party directories.

III. APPLICABLE LAW

Section 251 of the Act establishes a three-tier system of interconnection obligations. Section 251(a) obligates each telecommunications carrier "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(b) requires "local exchange carriers" to, among other things, "establish reciprocal compensation for the transport and termination of telecommunications." Finally, section 251(c) imposes additional obligations on "incumbent local exchange carriers." Section 153(44) broadly defines a "telecommunications carrier" as "any provider of telecommunications services." Section 153(46) in turn defines "telecommunications services" in equally broad terms as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[2] And, "'Telecommunications'

[1] On November 23, 2004, the Commission entered an Order in Docket No. C-3228 granting TWC's status as a CLEC in the state of Nebraska.

[2] 47 U.S.C. § 153(46) (emphasis added).

means the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[3]

Section 251(b)(5) of the Act provides that each local exchange carrier has a duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.[4]

Code of Federal Regulations, Title 47, Part 51, Section 51.701(e) provides that a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carreier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.[5]

IV. RURAL EXEMPTION NOT IMPLICATED

SENTCO has not raised the rural exemption as an issue in this proceeding. Nonetheless, the Commission clarifies that the rural exemption is not implicated in this case. Section 251(f)(1)(A) of the Act exempts rural telephone companies from the obligations imposed by Section 251(c). By express its terms, the rural exemption under Section 251(f)(1) is limited to obligations under Section 251(c), including interconnection obligations under Section 251(c)(2).[6] Nothing in Section 251(f)(1) mitigates an ILEC's obligation to interconnect with other telecommunications carriers under Section 251(a), or to enter into reciprocal compensation arrangements under Section 251(b)(5). Sprint seeks interconnection with SENTCO under Section 251(a), not Section 251(c)(2). SENTCO acknowledged in its pleadings that Section 251(c)(2) interconnection is not at issue in this case, noting that "*[m]oreover, this proceeding does not address any Section 251(c) issue.*"[7] Accordingly, the rural exemption under Section 251(f)(1) is not implicated in any way in this proceeding. Moreover, SENTCO has not petitioned for suspension or modification, under Section 251(f)(2), of its duties in Section 251(b) and (c), which applies to local exchange carriers with fewer than 2 percent of the nation's subscriber lines, has not been raised by SENTCO.

V. SENTCO'S DUTY TO INTERCONNECT

---

[3] 47 U.S.C. § 153(43).

[4] 47 U.S.C. §251(b)(5).

[5] 47 C.F.R. §51.701(e).

[6] Section 251(c)(2) provides, in pertinent part, that each incumbent local exchange carrier has the duty to "provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network, at any technically feasible point within the carrier's network."

[7] Motion to Dismiss or, in the Alternative, Response of Southeast Nebraska Telephone Company to Petition for Arbitration ("Motion to Dismiss"), footnote 3 (emphasis added).

A. SENTCO's Position

In light of the relationship between Sprint and TWC, specifically the services provided by Sprint to TWC, SENTCO contends that the definition of "End User or End User Customer" should exclude TWC's subscribers, and the definition of "Reciprocal Compensation" should exclude traffic originated and terminated by Sprint for TWC's end users. The basis for SENTCO's position is that TWC, not Sprint, will provide the billing, customer service, sales, and installation functions to TWC's subscribers. This boils down to the assertion that the Act only requires interconnection between those carriers that provide retail services directly to customers.

SENTCO argues that based on the services Sprint intends to provide TWC, Sprint is not acting as a telecommunications carrier. In support of its view, SENTCO relies on the case of *Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (1999). In that case, the D.C. Circuit affirmed the FCC's conclusion that the term "telecommunications carrier" under the Federal Act incorporates the preexisting definition of "common carrier" established by the earlier case of *National Association of Regulatory Commissioners v. FCC* ("*NARUC I*"), 525 F.2d 630 (D.C. Cir. 1976). (*See Virgin Islands Telephone Corp.*, 198 F.3d at 925-26.) Under the *NARUC I* test, "common carrier" status turns on whether the carrier "undertakes to carry for all people indifferently." (*Id.* at 926 (citing *NARUC*, 525 F.2d at 642)) In *Virgin Islands Telephone*, the court reviewed an FCC finding that an AT&T affiliate called AT&T-SSI was not acting as a common carrier by making capacity on its submarine cables available to other telecommunications providers that would, in turn, make that capacity available through services provided to end-user customers. The FCC had concluded that a service will not be considered "available to the public" or "effectively available to a substantial portion of the public" if it is "provided only for internal use or only to a specified class of eligible users under the Commission's rules." The FCC also stated that "whether a service is effectively available directly to the public depends on the type, nature, and scope of users for whom the service is intended and whether it is available to 'a significantly restricted class of users." (*Virgin Islands Telephone*, 198 F.3d at 924) The FCC rejected the argument that AT&T-SSI would be making a service effectively available directly to the public because AT&T-SSI's *customers* would use the capacity to provide a service to the public, noting that "[s]uch an interpretation is contrary to the plain language of the [Federal Act] by focusing on the service offerings AT&T-SSI's customers may make rather than on what AT&T-SSI will offer." (*Id.*) Under this analysis, SENTCO contends that Sprint is acting as a private carrier in its dealings with TWC.

B. Sprint's Position

According to Sprint, although Congress could have limited the definition of telecommunications carriers who are entitled to interconnect to those who provide telecommunications "directly to the public," it chose a broader definition that includes any entity that provides telecommunications "directly to the public, *or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.*" The italicized phrase refutes SENTCO's proposed retail/wholesale distinction. That distinction erroneously focuses on only the first half of the definition of a telecommunications carrier and renders the

italicized language superfluous.

Sprint contends that although SENTCO ignores the latter half of the definition of a telecommunications carrier, Sprint easily qualifies upon application of that language to the facts in this case. As Sprint's witness testified, Sprint will be providing to TWC, among other things, PSTN interconnection, switching, number assignment, administration, and porting, operator services, directory assistance and directory assistance call completion, 911 circuits and 911 database administration.

Sprint asserts that the essential services Sprint proposes to provide to TWC will make it possible for TWC's subscribers to place and receive telephone calls, not only to SENTCO's customers, but to customers of any telecommunications carrier whose network is connected directly or indirectly to SENTCO's. Without the services Sprint proposes to provide to TWC, TWC's subscribers could not place or receive any telephone calls that would require access to or from the PSTN. Sprint's switch performs all switching and routing functions for local, domestic, and foreign toll, emergency, operator assisted, and director assistance calls. As a result, Sprint is providing telephone exchange service and exchange access service as those terms are defined under the Act, and it is doing so in a manner that makes those services "effectively available to the public." Accordingly, Sprint contends, under the plain language of the Act, Sprint is a telecommunications carrier.

Sprint maintains that SENTCO's reliance on the *Virgin Islands Telephone* case is misplaced. Sprint notes that *Virgin Islands Telephone* Court declined to rest its decision on any retail-wholesale distinction[8] Thus, far from helping SENTCO, *Virgin Islands Telephone* expressly rejects the primary argument on which SENTCO's case rests. Furthermore, Sprint argues, there are key differences between the submarine cable service that AT&T-SSI offered in *Virgin Islands Telephone*, and the telecommunications services Sprint proposes to offer with TWC. AT&T-SSI's offering involved the provisioning of a submarine cable – a simple conduit. The *Virgin Islands Telephone* case did not address how the submarine cable would interconnect with local carriers for the purpose of exchanging traffic to and from the PSTN. In contrast, Sprint contends, Sprint is not simply selling bulk capacity, but instead will be solely responsible for all of the elements of interconnection. These elements include, among other things, the routing of calls, provisioning of interconnection trunks with SENTCO, and provisioning of telephone numbers. Sprint will provide both the conduit and the switching and routing functions. Accordingly, Sprint argues, Sprint's business model is different from the arrangement at issue in the *Virgin Islands Telephone* case, and given those differences, *Virgin Islands Telephone* is of limited utility. Sprint notes that the D.C. Circuit did not analyze the key statutory language at issue here, "effectively available directly to the public," but instead simply deferred to the FCC's choice to apply the NARUC I test without ever explaining how that test satisfied the statutory language. While such deference may have been appropriate on the particular facts presented in *Virgin Islands Telephone*, the facts here are markedly different and the FCC has never indicated that NARUC I test should apply in the factual context here.

Sprint also contends that even if the NARUC I test applied, Sprint meets it. Sprint asserts

[8] *Id.* at 929 (emphasis added).

that SENTCO ignores the case of *United States Telecom Association v. FCC*[9] (*"USTA"*), which holds that a carrier offering its services only to a legally defined class of users may still be a common carrier if it holds itself out indiscriminately to serve all within that class."[10] The key factor "is that the operator offer indiscriminate service to whatever public its service may legally and practically be of use."[11] In the *USTA* case, the D.C. Circuit stated that common carrier status under the two-prong test established in *NARUC I* "turns on: (i) whether the carrier holds 'himself out to serve indifferently all potential users'; and, (ii) whether the carrier allows the customers to transmit intelligence of their own design and choosing."[12] Sprint contends that it satisfies both prongs of the NARUC I test. It satisfies the first prong because Sprint will offer its services indifferently to all within the class of users consisting of TWC and all other entities who desire the services and who have comparable "last mile" facilities to the cable companies. Further, Sprint satisfies the second prong of the NARUC I test because Sprint will not alter the content of the voice communications by end users.

Sprint further argues that Sprint, not TWC, is the proper party to the interconnection agreement with SENTCO because it is Sprint's network, not TWC's, that will be physically interconnecting with SENTCO's network. Sprint contends that the customer service, billing, sales, and installation functions that TWC will be providing have nothing to do with how SENTCO's and Sprint's networks will interact with each other to carry local telephone traffic to and from the PSTN. Thus, according to Sprint, it is entirely appropriate and sensible for Sprint, not TWC, to have an interconnection agreement with SENTCO.

C. Commission Conclusions

The Commission finds that Sprint is a telecommunications carrier providing telecommunications services as those terms are defined in the Act. The services Sprint proposes to provide to TWC will make it possible for TWC's subscribers to place and receive telephone calls, not only to SENTCO's customers, but to customers of any telecommunications carrier whose network is connected directly or indirectly to SENTCO's. Without the services Sprint proposes to provide to TWC, TWC's subscribers could not place or receive any telephone calls that would require access to or from the PSTN. Sprint's switch performs all switching and routing functions for local, domestic, and foreign toll, emergency, operator assisted, and director assistance calls. As a result, Sprint is providing telephone exchange service and exchange access service as those terms are defined under the Act, and it is doing so in a manner that makes those services "effectively available to the public." Accordingly, under the plain language of the Act, Sprint is a telecommunications carrier.

The Commission also finds that Sprint offers its services indiscriminately to all within the class of users consisting of TWC and other entities who desire the services and who have comparable "last mile" facilities to the cable companies. In addition, Sprint will not alter the

---

[9] 295 F.3d 1326 (D.C. Cir.2002)

[10] *Id.* at 1333.

[11] *Id.* at 1333.

[12] *USTA* at 1329.

content of the voice communications by end users. Accordingly, Sprint satisfies both prongs of the NARUC I test. Further, the Commission finds that the provider of the "last mile" facilities, in this case TWC, will make the service available to everyone in their service territory, thus making Sprint's services effectively available to the public.

VI. SENTCO's DUTY TO ESTABLISH RECIPROCAL COMPENSATION

A. SENTCO's Position.

SENTCO contends that TWC's subscribers should be excluded from the calculation of reciprocal compensation in the proposed Agreement. SENTCO asserts that because TWC has the "last mile" facilities--analogized to a local loop in the testimony before the Commission--the traffic routed to and from the public switched telephone network ("PSTN") by Sprint's Class 5 end office switch originates and/or terminates on TWC's network and not on Sprint's network. Therefore, under the federal definition, traffic to and from TWC's subscribers is not traffic that "originates on the network facilities of the other carrier."

B. Sprint's Position.

According to Sprint, the credible evidence adduced in testimony and at the hearing establishes that the traffic at issue originates and terminates on Sprint's network for reciprocal compensation purposes. Sprint contends SENTCO's argument that the traffic originates on TWC's network rather than Sprint's is wrong because it is based on the premise that TWC owns the "last mile" facility. Sprint's witness testified that TWC's facilities here are roughly analogized to a loop (termed "loop-like" facilities by the Sprint witness). According to Sprint, local loop costs are excluded from reciprocal compensation purposes in accordance with the FCC's Local Competition Order, which specifically provides that local loop costs and line ports associated with local switches do not vary in proportion to the number of calls terminated, and thus such non-traffic sensitive costs are not considered for reciprocal compensation purposes.[13] Sprint contends that Sprint, not TWC, will bear the traffic-sensitive costs associated with termination of calls, and Sprint, not TWC, owns the switches and equipment through which all calls that touch the PSTN will be routed. According to Sprint, TWC's "soft switch" has no functionality to route calls to or from the PSTN apart from Sprint's end office switch. As a result, Sprint argues, there are no traffic-sensitive costs borne by TWC associated with terminating telephone calls to TWC customers. Sprint therefore contends that the traffic originates and terminates on Sprint's network for reciprocal compensation purposes.

Sprint also contends that it will provide the transport and termination of telecommunications traffic between TWC's subscribers and the PSTN within the meaning of the FCC regulations. Sprint's witness testified that Sprint owns the end office switch that will switch the subscribers' voice calls, and its switch performs all switching and routing functions for local, domestic, and foreign toll, emergency, operator assisted, and directory assistance calls.

---

[13] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, ¶1057 (1996) (hereinafter, "*Local Competition Order*")

Sprint's witness also testified that every call to or from a TWC subscriber that touches the PSTN will pass through Sprint's switch. Sprint asserts that TWC's "soft switch" can transmit telephone calls from one TWC subscriber to another TWC subscriber, but it cannot route any calls to or from the PSTN. According to Sprint, the TWC "soft switch" is connected to Sprint's end office switch; it is not connected to the PSTN and has no functionality to route telephone calls to or from the PSTN apart from Sprint's end office switch. In short, Sprint asserts, TWC's subscribers need Sprint's end office switch in order to place and receive local telephone calls to and from SENTCO customers (or customers of any other local exchange carrier in SENTCO's exchanges), toll calls to customers of interexchange carriers, 911 calls, operator assisted calls, and directory assistance calls.

Sprint's witness also testified that the Local Exchange Routing Guide ("LERG"), the CLLI Code, the local routing number, the LNP Query into the database and the 911 trunks are each factors that are relevant in the telecommunications industry for the purpose of defining whether a particular equipment is an end office switch. In each case, Sprint's witness testified that the TWC "soft switch" does not possess these attributes, and that the Sprint Class 5 end office switch does possess them.

According to Sprint, the credible testimony presented before and at the hearing demonstrates that when the "loop-like" equipment owned by TWC is properly excluded pursuant to the FCC's command in the *Local Competition Order*, it is clear that the Sprint switch originates and terminates traffic to and from the PSTN. Sprint provides the "termination" and "origination" within the meaning of the FCC's rules, and accordingly, Sprint satisfies the requirements for reciprocal compensation. Therefore, Sprint contends, SENTCO has a duty to establish reciprocal compensation for all local traffic exchanged between the Sprint and SENTCO networks for TWC end users.

C. Commission Conclusions.

The Commission finds that TWC's facilities are analogous to a local loop in the traditional wireline model. Local loop costs are excluded from reciprocal compensation under the FCC's rules. In addition, Sprint, not TWC, will bear the traffic-sensitive costs associated with termination of calls, and Sprint, not TWC, owns the switches and equipment through which all calls that touch the PSTN will be routed. Accordingly, the traffic to and from TWC's subscribers originates and terminates on Sprint's network for reciprocal compensation purposes.

Further, the Commission finds that TWC's "soft switch" has no functionality to route telephone calls to or from the PSTN apart from Sprint's end office switch. In short, TWC's subscribers need Sprint's end office switch in order to place and receive local telephone calls to and from SENTCO customers (or customers of any other local exchange carrier in SENTCO's exchanges), toll calls to customers of interexchange carriers, 911 calls, operator assisted calls, and directory assistance calls. Therefore, Sprint provides the "termination" and "origination" within the meaning of the FCC's rules, and Sprint satisfies the requirements for reciprocal compensation. Accordingly, SENTCO has a duty to establish reciprocal compensation for all local traffic exchanged between the Sprint and SENTCO networks for TWC end users.

VII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein, is of the opinion and finds that:

(1) the Commission has jurisdiction over the parties hereto and the subject matter hereof;

(2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;

(3) Sprint is a telecommunications carrier providing telecommunications services as those terms are defined in the Act;

(4) SENTCO has a duty to interconnect directly or indirectly with Sprint pursuant to Section 251(a) of the Act;

(5) SENTCO has a duty to establish reciprocal compensation with Sprint under Section 251(b)(5) of the Act;

(6) The definition of "End User or End User Customer" under the proposed interconnection agreement should include TWC's subscribers;

(7) The definition of "Reciprocal Compensation" under the proposed interconnection agreement should include traffic originated and terminated by Sprint for TWC's subscribers;

(8) The Commission adopts the language proposed by Sprint in the proposed interconnection agreement attached as an exhibit to the Petition for Arbitraion, and rejects the language proposed by SENTCO; and

(9) All motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the parties shall file their proposed interconnection agreement, as modified consistent with the findings herein, on or before September 16, 2005 in accordance with the nine-month period under Section 252(b)(4)(C) of the Act.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters is this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

By order of the Commission this ___ day of September, 2005.

SPRINT COMMUNICATIONS COMPANY L.P.

By: Diane Browning

Diane C. Browning

Attorney – State External Affairs
6450 Sprint Parkway
KSOPHN0212-2A511
Overland Park, KS 66251
913-315-9284
913-523-0571 (fax)

And

REED SMITH LLP
Raymond A. Cardozo
Two Embarcadero Center, Suite 2000
San Francisco, CA 94111
(415) 543-8700
(415) 391-8269

Nebraska Public Service Commission

300 The Atrium, 1200 N Street, Lincoln, NE 68508
Post Office Box 94927, Lincoln, NE 68509-4927
Website: www.psc.state.ne.us
Phone: (402) 471-3101
Fax: (402) 471-0254

NEBRASKA CONSUMER HOTLINE:
1-800-526-0017

September 13, 2005

CERTIFICATION

To Whom It May Concern:

I, Andy S. Pollock, Executive Director of the Nebraska Public Service Commission, hereby certify that the enclosed is a true and correct copy of the original order made and entered in C-3429 on the 13th day of September 2005. The original order is filed and recorded in the official records of the Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Nebraska Public Service Commission, Lincoln, Nebraska, this 13th day of September 2005.

Sincerely,

Andy S. Pollock
Executive Director

ASP:dk

Enclosure

cc: Diane C. Browning, 6450 Sprint Parkway, Mailstop KSOPHN0212-2A511, Overland Park, KS 66251
Bradford E. Kistler, Kinsey Ridenouer Becker & Kistler, LLP, 601 Lincoln Square, 121 S. 13th St., Lincoln, NE 68501
Elizabeth A. Sickel, Southeast Nebraska Telephone Co., 110 W. 17th St., Falls City, NE 68355
Paul M. Schudel, Woods & Aiken, LLP, 301 S. 13th St., Ste. 500, Lincoln, NE 68508
James Overcash, #18627, Woods & Aitken, LLP, 301 South 13th Street, Suite 500, Lincoln, NE 68508
Thomas J. Moorman, DC Bar No., 384790, KRASKIN, MOORMAN & COSSON, LLC, 2120 L Street, NW 520, Washington, DC 20037
REED SMITH LLP, Darren S. Weingard, Two Embarcadero Center, Ste. 2000, San Francisco, CA 94111
REED SMITH LLP, Raymond A. Cardozo, Two Embarcadero Center, Ste. 2000, San Francisco, CA 94111

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Sprint Communications Company L.P., Overland Park, Kansas, Petition for arbitration under the Telecommunications Act, of certain issues associated with the proposed interconnection agreement between Sprint and Southeast Nebraska Telephone Company, Falls City.	)	Application No. C-3429 FINDINGS AND CONCLUSIONS Entered: September 13, 2005

APPEARANCES:

For Sprint Communications Company L.P.
Darren S. Weingard
Reed Smith LLP
Two Embaracadero Center
Suite 200
San Francisco, CA 94111
And
Diane C. Browning
6450 Sprint Parkway
Mailstop KSOPHN0212-2A511
Overland Park, KS 66251

For Southeast Nebraska Telephone Company
Paul M. Schudel
James A. Overcash
Woods & Aitken LLP
301 South 13th Street, Suite 500
Lincoln, NE 68508
And
Thomas J. Moorman
Kraskin, Moorman & Cosson, LLC
2120 L Street, N.W., Suite 520
Washington, D.C. 20039

For the Nebraska Public Service Commission
Shanicee Knutson
300 The Atrium
1200 N Street
P.O. Box 94927
Lincoln, NE 68509

BY THE COMMISSION:

I. BACKGROUND

1. Petitioner, Sprint Communications Company L.P. (Sprint), is a limited partnership that has been certificated by the Nebraska Public Service Commission (Commission or NPSC) to provide competitive local exchange carrier (CLEC or competitive LEC) and other telecommunications services in the State of Nebraska, including local exchange areas served by the Respondent, Southeast Nebraska Telephone Company (SENTCO).

2. SENTCO is a corporation and is a rural incumbent local exchange carrier (ILEC) that has been certificated by the Commission to provide LEC and other telecommunications services in certain local exchange service areas in the State of Nebraska.

3. On December 16, 2004, SENTCO received a request from Sprint to negotiate terms and conditions of an interconnection agreement pursuant to § 252(a) of the Telecommunications Act of 1996 (the Act). Thereafter, the parties proceeded with negotiations. As part of that negotiation, SENTCO made clear to Sprint, and Sprint confirmed, that SENTCO would not be engaging in voluntary negotiations "without regard to the standards set forth in subsection (b). . . of section 251." 47 U.S.C. § 252 (a)(1); see also Ex. 4. As a result of such negotiations, Sprint and SENTCO resolved all but two issues relating to the interconnection agreement.

4. On May 23, 2005, Sprint filed a Petition for Arbitration with the Commission, pursuant to § 252(b) of the Act, seeking arbitration as to the remaining open issues. Attached to the Petition was the Interconnection and Reciprocal Compensation Agreement (the Agreement) between the parties that contains the terms and conditions of interconnection as agreed upon by the parties. The Agreement also reflects in Sections 1.6 and 1.22 the provisions that are disputed between the parties. On June 17, 2005, SENTCO filed its Motion to Dismiss, or in the alternative, its Response to the Petition for Arbitration.

5. On June 14, 2005, in response to SENTCO's Motion requesting that the Commission act as the arbitrator in this matter as opposed to a third party arbitrator, the Commission entered its Order granting SENTCO's Motion and designated the Commission to act as the arbitrator in this matter. Sprint did not oppose this designation.

6. On June 22, 2005, a planning conference was held by the Hearing Officer. A Planning Conference Order was entered by the Hearing Officer on June 28, 2005 that approved the parties' agreement that SENTCO's Motion to Dismiss would be resolved in conjunction with the Commission's decision in this proceeding after the presentation of evidence and submission of proposed orders and briefs. Such Order also established a schedule for completion of the arbitration.

7. The hearing of this matter was conducted by the Commission on August 10, 2005 pursuant to the Arbitration Policy established in C-1128, Progression Order No. 3 dated August 19, 2003. Evidence and testimony was introduced and received into the record. Pursuant to the Planning Conference Order, following the hearing the parties were advised that proposed orders and Post-Hearing Briefs should be submitted to the Commission on or before September 2, 2005.

II. ARBITRATED ISSUES

8. The two unresolved issues expressly identified and raised by Sprint in its Petition for Arbitration, and addressed in the Response thereto are:

> Issue I: Should the definition of "End User or End User Customer" include end users of a service provider for whom Sprint provides interconnection and other telecommunications services? (Section 1.6 and as applied elsewhere in the Agreement.)
>
> Issue II: Should the definition of "Reciprocal Compensation" include the transportation and termination on each carrier's network of all Local Traffic? (Section 1.21 and as applied elsewhere in the Agreement.)

III. CASE SUMMARY 1448

9. The parties agree that if Sprint's intended use of the Interconnection Agreement were limited to Sprint's provision of telecommunications service to Sprint retail customers located in SENTCO's exchange service areas, no issues would exist between the parties requiring arbitration. Tr. 99:14-19. Sprint has entered into a business arrangement with Time Warner Cable Information Services (Nebraska) LLC d/b/a Time Warner Cable (Time Warner) to support Time Warner's offering of local and long distance voice services in the Falls City area. SENTCO disputes that Sprint is entitled to utilize the Agreement for

the benefit of Time Warner or any other third party. (*See generally*, Ex. 2).

10. Sprint expressed no intention of being the retail provider of telecommunications services. Rather, Time Warner will provide retail voice telecommunications services, will exclusively have all customer relationships, will market the service in the name of Time Warner, will perform all billing functions and will resolve all customer complaints. Tr. 27:9-28:1. Sprint has entered into a Wholesale Voice Services Agreement with Time Warner pursuant to which Sprint intends to provide certain telecommunications services to Time Warner on a wholesale basis. Ex. 20, Confidential Attachment.

11. The network over which telecommunications service is proposed to be provided to Time Warner's customers consists of a combination of Sprint and Time Warner facilities. *See* Ex. 107. In the case of a call originated by a Time Warner customer to another Time Warner customer, the call would be handled entirely by Time Warner on its own network. *See* Ex. 16, 13:11-23. In the case of a call originated by a Time Warner customer to a party that is not a Time Warner customer, the call travels from the customer's premises over Time Warner facilities to the Time Warner soft switch which routes the call to a gateway device that converts the call from Internet Protocol to circuit switched format, at which point the call would be passed to the Sprint network for termination. Ex. 16, 14: 2-15, 31:5-21 and Ex. 12, Ex. E. Time Warner's soft switch is responsible for routing of calls originated by Time Warner customers. *See* Ex. 16, 32:4-10. The soft switch directly serves the Time Warner customer.

O P I N I O N A N D F I N D I N G S

IV. PRELIMINARY ISSUES 1449

12. On July 29, 2005, Sprint filed a Motion in Limine seeking to exclude from evidence certain documents that SENTCO had identified as exhibits in response to the schedule requirements set forth in the Planning Conference Order. SENTCO submitted a written Response to the Motion in Limine. On August 5, 2005, the Hearing Officer entered an Order that granted Sprint's Motion with regard to Exhibits 7, 13 and 14, and overruled Sprint's Motion in all other respects.

13. At the hearing, SENTCO offered Exhibits 7, 13 and 14 in evidence. The Hearing Officer reserved ruling on these

offers and on August 17, 2005 issued a Hearing Officer Order sustaining Sprint's objections to such exhibits.

14. On August 8, 2005, Sprint also filed a Motion to Strike the Rebuttal Testimony of Steven E. Watkins. SENTCO submitted a Response to the Motion to Strike on August 9, 2005. Later in the day on August 9, the Hearing Officer entered an Order denying the Motion to Strike. Mr. Watkins testified at the hearing of this matter and his Pre-filed Rebuttal Testimony and attachments were received in evidence as Exhibit 22. The Commission affirms the Hearing Officer's August 9, 2005 denial of Sprint's Motion to Strike and the admission of Exhibit 22 in evidence. We do not regard this rebuttal testimony as Mr. Watkins' testifying to a legal question as Sprint contends in its Motion to Strike, any more than similar statements regarding the Act and applicable FCC rules that are cited and addressed by Sprint's witness, James Burt.

V. JURISDICTION

15. Section 252(e)(1) of the Act requires that any interconnection agreement adopted by arbitration be submitted to the state commission for approval. The Commission's review of the arbitrated agreement is limited by § 252(b)(4) of the Act, which provides, "Action by State Commission. (A) The state commission shall limit its consideration of any petition [for arbitration] under paragraph (1) [of § 252(b) of the Act] (and any response thereto) to the issues set forth in the petition and the response, if any, filed under paragraph (3)." Thus, in reviewing this matter, the Commission is statutorily constrained to only consider the issues raised by the parties in the Petition for Arbitration and in the Response within the meaning of § 252(b)(4). If necessary, however, § 252(b)(4)(B) of the Act provides that "the commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision . . ."

16. Also, in reviewing interconnection agreements, state commissions are allowed, pursuant to § 252(e)(3) of the Act, to utilize and enforce state law in the review of agreements. Accordingly, the Commission may also consider the Nebraska Legislature's directive that: "Interconnection agreements approved by the commission pursuant to § 252 of the Act may contain such enforcement mechanism and procedures that the commission determines to be consistent with the establishment of fair competition in Nebraska telecommunications markets." *Neb. Rev. Stat.* § 86-122(1).

17. In order to fully implement § 252(e), the Commission has adopted the Arbitration Policy. Under that Policy, the Commission may only approve arbitrated agreements that: "1) ensure that the requirements of § 251 of the Act and any applicable Federal Communications Commission ("FCC") regulations under that section are met; 2) establish interconnection and network element prices consistent with the Act; and 3) establish a schedule for implementation of the agreement (pursuant to § 252(c))."

VI. ANALYSIS

A. Issue I

18. Sprint has entered into a business arrangement with Time Warner to provide competitive alternatives to customers in Falls City, Nebraska to the extent Time Warner can provide last mile facilities to customers. Time Warner would be the company customers would interface with while Sprint would provide Time Warner with certain functionalities to enable Time Warner to provide a finished telecommunications product. Sprint will provide telephone numbers, 911 circuits, to the appropriate PSAP through the ILEC's selective routers, would perform 911 database administration, directory listings, and some switching functionalities, the extent to which is disputed by the parties. Clearly, at the time the Commission granted Time Warner its certificate of public convenience and necessity in Application No. C-3228, we anticipated that Time Warner would enter the market in Falls City. The Commission granted Time Warner the authority to provide service in that area. However, we established a process in that Order by which Time Warner was to use to enter the market in competition with SENTCO. We stated that Time Warner must:

1. File written notice with the Commission when a bona fide request has been sent either by it or its underlying carrier to a rural ILEC.
2. The rural ILEC then will have 30 days in which to raise the rural exemption as a reason not to negotiate or arbitrate an agreement.
3. The Commission will rule on the rural exemption in accordance with the Telecommunications Act of 1996 (Act).
4. The parties will either negotiate or arbitrate an agreement. The parties will file the agreement for approval. The Commission will

then approve or reject the agreement in accordance with the Act.

In the Matter of the Application of Time Warner Cable Information Services, LLC, d/b/a Time Warner Cable, Nebraska, Stamford, Connecticut, for a Certificate of Authority to provide local and interexchange voice services within the state of Nebraska, Application No. C-3228 (November 23, 2004) at 5-6.

19. Time Warner has not taken any of the foregoing steps. Rather, Sprint takes the position that it is entitled to establish and interconnection agreement with SENTCO that will apply to end user customers of a third-party telecommunications carrier such as Time Warner.

20. We wholeheartedly support Time Warner and Sprint's goals to provide competitive alternatives to the Falls City consumers; however, we agree with SENTCO that Time Warner is the proper party to negotiate with SENTCO for bringing that service to Falls City. We encourage Time Warner and SENTCO, who we believe are the appropriate parties, to expeditiously work towards an interconnection agreement to provide service to customers in the Falls City exchange.

21. Independently of our finding that Time Warner is a necessary party to negotiate interconnection with SENTCO, we find, based on the record before us, Sprint has failed to demonstrate that it is a "telecommunications carrier" (47 U.S.C. § 153(44)) when it acts under its private contract with Time Warner. Further, we conclude the duty of the ILEC under § 251(b)(5) to establish reciprocal compensation arrangements extends properly to Time Warner as the entity operating the end office switch or, in this case its functional equivalent - the Time Warner soft switch - that directly serves the called party.

22. Through this soft switch, Time Warner ensures that only calls destined to the Public Switched Telephone Network originated by a Time Warner end user are transported through Sprint for termination, and it is through this soft switch that all calls are correctly routed to the Time Warner end user customers. Further, it is this soft switch that routes and delivers calls within the Time Warner network between two Time Warner end users. In this latter class of calls, Time Warner in no way utilizes the Sprint transport arrangement that Sprint and Time Warner have established through their private contract. Accordingly, we find that the soft switch operated by Time Warner provides the switching envisioned by the applicable FCC Rules and the Act. Consequently, under the Sprint/Time Warner private contract, it is only Time Warner as the owner of the

soft switch, that can request a § 251(b)(5) reciprocal compensation arrangement from SENTCO.

23. While we find that our C-3228 Order addresses this issue, we also find independently, that we reach the same conclusion based on applying applicable case law, the Act and controlling FCC rules. A necessary pre-condition for an entity to assert rights under §§ 251 (a) or (b) of the Act is that it must be a "telecommunications carrier." Compare 47 U.S.C. §§ 153(44), 251(a), and (252(a)(1). Section 153 (44) defines "telecommunications carrier" as "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in Section 226)." Section 153(46), in turn, defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

24. Relevant FCC and judicial precedents have interpreted the definition of "telecommunications carrier" to include only those entities that are "common carriers." *See Virgin Islands Telephone Corporation v. FCC*, 198 F.3d 921, 926 (D.C. Cir. 1999) ("VITELCO"); *see also National Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630 (D.C. Cir. 1976) *cert denied*, 425 U.S. 992 ("NARUC I"). Thus, as a matter of law, only where an entity is a common carrier can that entity assert rights to seek interconnection agreements under Section 251 of the Act. *See* 47 U.S.C. § 252 (a)(1); see also 47 U.S.C. § 251(a). The VITELCO court also made clear that the "key determinant" of common carrier/telecommunications carrier status is whether an entity is "holding oneself" out to serve indiscriminately." VITELCO, 198 F.3d at 927; citing NARUC I, 525 F.2d at 642. "But a carrier will not be a common carrier where its practice is to make individualized decisions in particular cases, whether and on what terms to deal. It is not necessary that a carrier be required to serve all indiscriminately; it is enough that its practice is, in fact, to do so." NARUC I, 525 F.2d at 641 (footnotes omitted); see also VITELCO, 198 F.3d at 925. Moreover, since a state commission assumes federal authority when it acts pursuant to Section 252 of the Act, the Commission is required to employ these standards when arbitrating an interconnection agreement. *See Bell Atlantic-Delaware, Inc. v. Global NAPs South, Inc.*, 77 F. Supp.2d 492, 500 (D.DE 1999) compare *AT&T Communications Systems v. Pacific Bell*, 203 F.3d 1183, 1188 (9th Cir. 1999); *Indiana Bell Telephone Company, Inc. v. Smithville Telephone Company, Inc.*, 31 F. Supp.2d 628, 632 (S.D. IL 1998).

25. Applying these standards to the record before us, we find that Sprint has not produced sufficient evidence to persuade us that it is a "telecommunications carrier" when it fulfills its private contractual obligation to Time Warner. Rather, Sprint's arrangement with Time Warner is an individually negotiated and tailored, private business arrangement shielded from public review and scrutiny. As such, Sprint cannot sustain any claim that it is eligible under Sections 251 and 252 to assert rights afforded "telecommunications carriers" through its arrangement with Time Warner. Although the Sprint witness testified that Sprint is willing to make its wholesale services available to others, it has not demonstrated by its actions that it is holding itself out "indiscriminately" to a class of users to be effectively available directly to the public.

26. We are unconvinced for many reasons. First, the Wholesale Voice Services Agreement is a private contract between Sprint and Time Warner and is treated by Sprint as confidential. Also, Sprint states that any agreement will be individually tailored to the cable company with which Sprint is contacting and Sprint will address the needs and capabilities as presented. *See* Ex. 102, Burt Testimony at 27. Independently, the individualized nature of Sprint's arrangements is demonstrated by the existence of both the Sprint-Time Warner Wholesale Voice Services Agreement and the Sprint-Cable Montana LLC Wholesale Voice Service Agreement. *See* Ex. 20. Thus, the record confirms that Sprint tailors its arrangements with respect to those entities with which it wishes to contract. Further, Sprint has no tariff in place describing the standard business relationship that it will provide to an entity. *See* Ex. 102, Burt Testimony at 27. While Sprint has indicated that it will file such a tariff if directed by the Commission, we question that suggestion in that no submission of the sort has been made. Even if a tariff filing were to be made, we need the opportunity to scrutinize whether, as a matter of fact, the tariffed relationship was an indiscriminate offering of Sprint. In addition, the only service that Sprint unequivocally states will be offered "to the general public" is Sprint's offering of "exchange access." *See id.* at 21-22. However, we note that exchange access is the input for telephone toll services and is not local exchange traffic that is subject to § 251 (b)(5) reciprocal compensation according to 47 C.F.R. § 51.701(a) and (b) in which the FCC expressly excluded "intrastate exchange access" from the definition of "telecommunications traffic" to which reciprocal compensation applies.

27. Based on the record, there is only one user of Sprint's private contract services in Nebraska, Time Warner. *See* Ex. 20, Sprint Response to Admission No. 7. As one court

noted, there is a substantial question as to whether a "single network user" could be found to be a "common carrier without being arbitrary and capricious . . ." *United States Telecom Association v. FCC*, 295 F.3d 1326, 1335 (D.C. Cir. 2002). Thus, as a consequence of Sprint's provision of services to Time Warner, Sprint fails to convincingly persuade us that its private contract service fits within the "classes of users as to be effectively available directly to the public . . ." in order to make Sprint qualify as a telecommunications carrier.

28. Sprint points out that a few other state commissions have addressed the type of contractual relationship established between Sprint and Time Warner. *See* Post-Hearing Brief of Sprint Communications Company L.P. (September 2, 2005) at 9. Specifically, Sprint states, the Illinois Commerce Commission, the New York Public Service Commission and the Public Utility Commission of Ohio have held that a service provider which provides network interconnection and other similar services to cable companies can interconnect with rural LECs. *Id.* We have reviewed those decisions but we cannot agree with their conclusions based on the legal arguments and the facts provided to the Commission in this case.

B. Issue II

29. Even if Sprint were a telecommunications carrier when it fulfills its private contractual obligations to Time Warner we also find that Sprint cannot assert any right to seek § 251(b)(5) reciprocal compensation. In establishing the pricing standards for reciprocal compensation, Congress stated that "such terms and conditions [for reciprocal compensation] provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network of calls that originate on the network facilities of the other carrier." 47 U.S.C. § 252(d)(2)(ii). Moreover, the "origination" of a call occurs only on the network of the ultimate provider of end user service, which the FCC confirmed.

> We define "transport," for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that ***directly serves the called party*** *(or equivalent facility provided by an non-incumbent carrier).*

See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Radio Service Providers, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499 (1996) at 16015 (¶1039) (emphasis added). Further, the applicable FCC rules state the same concept.

> (c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to ***the terminating carrier's end office switch that directly serves the called party,*** or equivalent facility provided by a carrier other than an incumbent LEC.
>
> *(d) Termination.* For purposes of this subpart, termination is the switching of telecommunications traffic at the ***terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party' s premises.***
>
> *(e) Reciprocal compensation.* For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the *transport* ***and termination*** on each carrier's network facilities of ***telecommunications traffic that originates on the network facilities of the other carrier.***

1456

47 C.F.R. §§ 51.701(c), (d) and (e) (emphasis added).

30. When these standards are applied to the facts, we find that substantial record evidence confirms that it would be Time Warner *not* Sprint that could assert the right to seek a reciprocal compensation arrangement under § 251(b)(5) with SENTCO. First, the record is clear that Time Warner serves the "called party" and is the only entity with the relationship with that end user that is the called party. *See, e.g.*, Tr. 27:20-23, 28:3-6.

31. Second, Time Warner operates the end office switch or equivalent facility since Time Warner has a "soft switch" (*see* Ex. 16, at 31 (lines 5-21)); it is the soft switch that performs switching since only those calls that are intended to be sent to

the Public Switched Telephone Network are sent to Sprint with all other calls between Time Warner end users being switched solely between those end users by Time Warner. *See, e.g.*, Tr. 43:5-44:6. To this end, we agree with SENTCO that Sprint's efforts to equate the term "end office switch" with a Class 5 end office should be rejected. Since the term used by the FCC is "end office" or "equivalent facility" (*see* 47 C.F.R. §51.701(c)), industry identifiers for Class 5 switches are not controlling. *See* Tr. 147:3-19.

32. Finally, the record confirms that all calls either originate or terminate on the Time Warner network facilities. *See, e.g.*, Ex. 102, Burt Testimony at 6 (line 131). Therefore, Sprint *does not* "directly serve . . . the called party" (47 C.F.R. §51.701(c)), nor does the traffic "originate" on Sprint's network. 47 C.F.R. § 51.701(e). Rather, it is Time Warner that owns the "last mile" over which the end user will "originate" a call, it is Time Warner's facilities that will "directly serve . . . the called party," and it is Time Warner's soft switch (or Sprint's newly enunciated term for Time Warner's soft switch - the Time Warner "PBX-like switch") that terminates the call and provides the final switching to the called party.

33. We find unpersuasive Sprint's efforts to recast the network arrangement it anticipates having with Time Warner. Sprint seems to suggest that the Time Warner-provided network components are comprised of only the "local loop" (*see, e.g.*, Ex. 102, Burt Testimony at 6 (lines 131-132), 15 (line 354) to 16 (line 356) and Ex. 107), also suggesting that the Time Warner soft switch is a "PBX-like switch." Ex. 102, Burt Testimony at 16 (line 370). From the testimony provided by Time Warner, we believe Time Warner operates a soft switch and that this device provides switching not only for Time Warner end user to Time Warner end user calls but also for those calls made by and sent to a Time Warner end user from another carrier's end users.

34. Accordingly, we reject Sprint's efforts to suggest that its *current* network description *now* differs from that previously described to the Commission. Even during his testimony at the hearing, Sprint witness Burt stated "Any - any call that does not go to the pubic switch telephone network, such as the example you gave, one Time Warner Cable subscriber to another, would stay within *Time Warner Cable switch.*" Tr. 47:5-9 (emphasis added). We are not persuaded by Sprint's attempts to portray its switching facilities as the switch that directly serves the Time Warner end users.

VII. RESOLUTION OF ISSUES

A. Issue No. 1

Should the definition of "End User or End User Customer" include end users of a service provider for whom Sprint provides interconnection and other telecommunications services? (Section 1.6 and as applied elsewhere in the Agreement.)

35. For the reasons stated above, we find that this issue should be resolved in favor of SENTCO and that any reference to "third party" or "third parties" within the definition of "end user" be removed.

B. Issue No. 2

Should the definition of "Reciprocal Compensation" include the transportation and termination on each carrier's network of all Local Traffic? (Section 1.21 and as applied elsewhere in the Agreement.)

36. For the reasons stated above, we find that this issue should be resolved in favor of SENTCO and that no third party traffic shall be subject to this Agreement. Thus, the only traffic that will be exchanged between SENTCO and Sprint under the terms of the Agreement is that which is generated by or terminated to the end user customers physically located within the SENTCO certificated area and for which both SENTCO and Sprint shall compete to provide retail end user services.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission acting as Arbitrator in this proceeding that the issues presented in the Petition for Arbitration filed by Sprint shall be resolved in accordance with the foregoing Findings and Conclusions.

IT IS FURTHER ORDERED that an interconnection agreement containing the terms and conditions consistent with the findings set forth herein shall be filed with the Commission not later than October 13, 2005.

MADE AND ENTERED at Lincoln, Nebraska this 13th day of September, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Vice - Chairman

//s// Rod Johnson

ATTEST:

Executive Director

COMMISSIONERS DISSENTING:

//s// Anne C. Boyle

Nebraska Public Service Commission

300 The Atrium, 1200 N Street, Lincoln, NE 68508
Post Office Box 94927, Lincoln, NE 68509-4927
Website: www.psc.state.ne.us
Phone: (402) 471-3101
Fax: (402) 471-0254

NEBRASKA CONSUMER HOTLINE:
1-800-526-0017

November 23, 2005

Re: Application No. C-3429; In the Matter of Sprint Communications Company L.P. (Sprint), Overland, Kansas, petition for arbitration under the Telecommunications Act, of certain issues associated with the proposed interconnection agreement between Sprint and Southeast Nebraska Telephone Company.

To Whom It May Concern:

I was unable to attend the November 22, 2005 public meeting of the Nebraska Public Service Commission and therefore could not vote on the order in Docket C-3429 which found the arbitrated interconnection agreement filed by Southeast Nebraska Telephone Company and Sprint should be approved. Had I been able to attend the November 22, 2005 public meeting, I would have voted against adopting the order. I voted against adopting the September 13, 2005 Arbitration Order because I believe that Sprint should be allowed to interconnect with Southeast Nebraska Telephone Company's network for the purpose of serving all types of end users including end user customers of a third party telecommunications carrier. For the same reasons I would have voted no on the order approving the filed agreement.

Sincerely,

Anne C. Boyle
Commissioner 2nd District

Enclosure

cc: Diane C. Browning, 6450 Sprint Parkway, Mailstop KSOPHN0212-2A511, Overland Park, KS 66251
Bradford E. Kistler, Kinsey Ridenouer Becker & Kistler, LLP, 601 Lincoln Square, 121 S. 13th St., Lincoln, NE 68501
Elizabeth A. Sickel, Southeast Nebraska Telephone Co., 110 W. 17th St., Falls City, NE 68355
Paul M. Schudel, Woods & Aiken, LLP, 301 S. 13th St., Ste. 500, Lincoln, NE 68508
James Overcash, #18627, Woods & Aitken, LLP, 301 South 13th Street, Suite 500, Lincoln, NE 68508
Thomas J. Moorman, DC Bar No., 384790, KRASKIN, MOORMAN & COSSON, LLC, 2120 L Street, NW 520, Washington, DC 20037
REED SMITH LLP, Darren S. Weingard, Two Embarcadero Center, Ste. 2000, San Francisco, CA 94111
REED SMITH LLP, Raymond A. Cardozo, Two Embarcadero Center, Ste. 2000, San Francisco, CA 94111

INTERCONNECTION AND RECIPROCAL COMPENSATION AGREEMENT

BETWEEN

SOUTHEAST NEBRASKA TELEPHONE COMPANY

AND

SPRINT COMMUNICATIONS, L.P.

1461

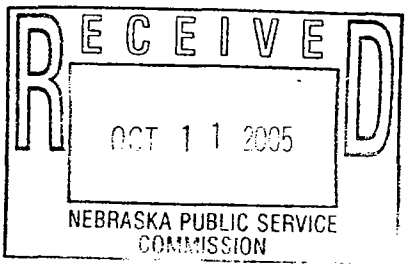
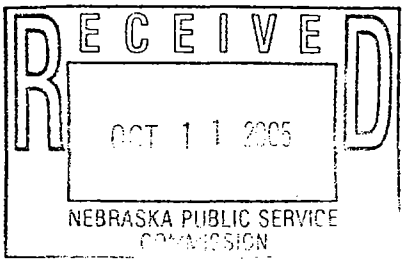
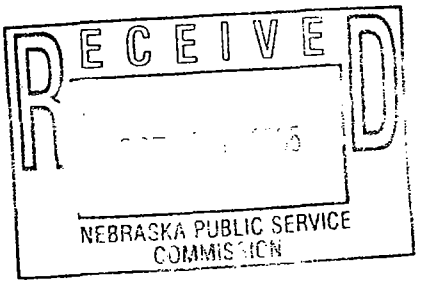


TABLE OF CONTENTS

			Page
I.	Article I		1
	1.0	INTRODUCTION	1
	2.0	RECITALS	1
II.	Article II		1
	1.0	DEFINITIONS	1
	2.0	INTERPRETATION AND CONSTRUCTION	4
	3.0	SCOPE	4
	4.0	SERVICE AGREEMENT	5
	5.0	COMPENSATION	6
	6.0	NOTICE OF CHANGES	7
	7.0	GENERAL RESPONSIBILITIES OF THE PARTIES	8
	8.0	TERM AND TERMINATION	8
	9.0	CANCELLATION CHARGES	9
	10.0	NON-SEVERABILITY	9
	11.0	INDEMNIFICATION	9
	12.0	LIMITATION OF LIABILITY	10
	13.0	DISCLAIMER	11
	14.0	REGULATORY APPROVAL	11
	15.0	PENDING JUDICIAL APPEALS AND REGULATORY RECONSIDERATION	11
	16.0	MOST FAVORED NATION PROVISION	12
	17.0	MISCELLANEOUS	12
	18.0	DISPUTE RESOLUTION	17

1462





I. Article I

1.0 INTRODUCTION

This Interconnection and Reciprocal Compensation Agreement ("Agreement") shall be effective as of October ___, 2005 (the "Effective Date"), by and between Southeast Nebraska Telephone Company ("SENTCO") with it principal place of business at 110 West 17th Street, Falls City, Nebraska 68355 and Sprint Communications, L. P., a Delaware limited partnership with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251 ("Sprint").

2.0 RECITALS

WHEREAS, SENTCO is an incumbent Local Exchange Carrier providing Telephone Exchange Service and Exchange Access in the State of Nebraska;

WHEREAS, Sprint is authorized by the Commission to provide competitive local exchange telecommunications service within the State of Nebraska;

WHEREAS, SENTCO and Sprint wish to establish Interconnection and Reciprocal Compensation arrangements for exchanging traffic as specified below;

WHEREAS, SENTCO certifies that it is a rural telephone company and is exempt from Section 251(c) pursuant to Section 251(f) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act");

WHEREAS, Sprint confirms to SENTCO that its request for interconnection with SENTCO was only intended to address the interconnection obligations under Section 251(a) and (b) of the Act and the procedures for negotiation, arbitration and approval of agreements under Section 252 of the Act;

WHEREAS, Sections 251 and 252 of the Act have specific requirements for Interconnection, and the Parties intend that this Agreement meets these requirements.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SENTCO and Sprint hereby agree as follows:

II. Article II

1.0 DEFINITIONS

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be

understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

1.1. "Act" means the Communications Act of 1934, as amended.

1.2. "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

1.3. "End Office Switch" means a switch used to provide Telecommunications Service to subscribers and may include, but is not limited to one of the following:

(a) "Stand-Alone End Office Switch" is a switch in which the subscriber station loops are terminated for connection to either lines or trunks. The subscriber receives terminating, switching, signaling, transmission, and related functions for a defined geographic area by means of a Stand-Alone End Office Switch.

(b) "Remote End Office Switch" is a switch in which the subscriber station loops are terminated. The control equipment providing terminating, switching, signaling, transmission, and related functions would reside in a Host End Office Switch. Local switching capabilities may be resident in a Remote End Office Switch.

(c) "Host End Office Switch" is a switch with centralized control over the functions of one or more Remote End Office Switches. A Host End Office Switch can serve as a Stand-Alone End Office Switch as well as providing services to other Remote End Office Switches requiring terminating, signaling, transmission, and related functions including local switching.

1.4. "Commission" means the Public Service Commission of Nebraska.

1.5. "Effective Date" means the date first above written.

1.6. "End User or End User Customer" means the residence or business subscriber that is the ultimate user of Telecommunications Services provided by either of the Parties.

1.7. "Exchange Access" has the meaning given in the Act.

1.8. "FCC" means the Federal Communications Commission.

1.9. "Interconnection" for purposes of this Agreement is the linking of SENTCO and Sprint networks for the exchange of Local Traffic described in this Agreement.

1.10. "Interexchange Carrier" or "IXC" means a Telecommunications Carrier that provides Telephone Toll Service, as defined in the Act

1.11. "ISP Bound Traffic" means traffic that is originated on the network of either of the Parties and is transmitted to or returned from the Internet at any point during the duration of the transmission; provided, however, that ISP Bound Traffic shall not include voice traffic.

1.12. "Local Service Area" means the certified exchange service area within which SENTCO is authorized by the Commission to provide Telephone Exchange Service.

1.13. "Local Traffic" is defined for all purposes under this Agreement as traffic that is originated by and terminated to End Users physically located within the Local Service Area. Local Traffic includes traffic exchanged between the parties when some portion of such traffic is circuit switched but does not include ISP Bound Traffic.

1.14. "Local Exchange Carrier" or "LEC" is as defined in the Act.

1.15. "Non-Local Traffic" means any traffic that is not Local Traffic as defined above, but does not include ISP Bound Traffic.

1.16. "NPA" or the "Number Plan Area" also referred to as an "area code" refers to the three-digit code which precedes the NXX in a dialing sequence and identifies the general calling area within the North American Numbering Plan scope to which a call is routed (i.e., NPA/NXX-XXXX).

1.17. "NXX" means the three-digit code, which appears as the first three digits of a seven-digit telephone number within a valid NPA or area code.

1.18. "Party" means either SENTCO or Sprint, and "Parties" means SENTCO and Sprint.

1.19. "Point of Interconnection" ("POI") means that technically feasible point of demarcation located within SENTCO's network where the exchange of Local Traffic between the Parties takes place.

1.20. "Rate Center" means the specific geographic point and corresponding geographic area that is associated with one or more NPA-NXX codes that have been assigned to an incumbent LEC for its provision of Telecommunications Service.

1.21. "Reciprocal Compensation" means an arrangement between two carriers in which each receives compensation from the other carrier for the transport and termination on each carrier's network of Local Traffic, as defined in Section 1.13 above that originates on the network facilities of the other carrier.

1.22. "Telecommunications" has the meaning given in the Act.

1.23. "Telecommunications Carrier" has the meaning given in the Act.

1.24. "Telecommunications Service" has the meaning given in the Act.

1.25. "Telephone Exchange Service" has the meaning given in the Act.

1.26. "Telephone Toll Service" has the meaning given in the Act.

1.27. "Termination" means the switching of Local Traffic at the terminating carrier's End Office Switch, or equivalent facility, and delivery of such traffic to the called party.

1.28. "Transport" means the transmission of Local Traffic subject to Section 251(b)(5) of the Act from the Point of Interconnection between the Parties to the terminating carrier's End Office Switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

2.0 INTERPRETATION AND CONSTRUCTION

All references to Sections, Exhibits and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument or other third party offering, guide or practice, statute, regulation, rule or tariff is for convenience of reference only and is not intended to be a part of or to affect the meaning of a rule or tariff as amended and supplemented from time-to-time (and, in the case of a statute, regulation, rule or tariff, to any successor provision). The Parties acknowledge that some of the services, facilities, or arrangements described herein reference the terms of federal or state tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the conflicting provision contained in this Agreement shall prevail.

3.0 SCOPE

3.1. This Agreement is intended, inter alia, to describe and enable specific Interconnection and Reciprocal Compensation arrangements between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided for herein.

3.2. This Agreement sets forth the terms, conditions, and rates under which the Parties agree to interconnect their networks for purposes of exchanging Local Traffic originated by the Parties' respective End Users.

3.3. Sprint represents that it is a provider of Telecommunications Service to End Users in Nebraska. Sprint's NPA/NXXs are listed in Telcordia's Local Exchange Routing Guide ("LERG"), and this Agreement shall apply to all Operating Company Numbers ("OCN") assigned to Sprint.

3.4. This Agreement is limited to SENTCO End Users' traffic for which SENTCO has tariff authority to carry. SENTCO's NPA/NXXs are listed in the LERG under OCN 1591, in the State of Nebraska.

3.5. The traffic that is exchanged between the Parties through an Interexchange Carrier, on a toll basis, is not Local Traffic and is not subject to this Agreement, but rather is subject to Section 251(b)(3) and 251(g) of the Act.

4.0 SERVICE AGREEMENT

This Agreement provides for the following interconnection and arrangements between the networks of SENTCO and Sprint. Routing of traffic shall be as described in this section, except that, alternatives may be employed in the event of emergency or temporary equipment failure.

4.1. The Parties shall physically connect their networks via dedicated connections/circuits at the POI. Each Party shall be solely responsible for the cost and operation of the facilities to its side of the POI. The Parties acknowledge that options are available to each Party to accomplish such connections to the POI. These options include provision of dedicated circuits by the Party, provision of dedicated circuits arranged through third parties, or tariffed service offerings by SENTCO to the extent that Sprint so elects. If any third party is used by a Party to arrange for dedicated connection to the POI, such Party, in addition to bearing all costs associated with the use of such third party's network, shall be solely responsible for such third party's activities to accomplish such connection. If a Party elects to utilize a third party pursuant to this section, the other Party agrees to work cooperatively with such third party to establish and maintain the physical connection at the POI in a manner that is consistent with then existing industry technical standards.

4.2. Unless the Parties otherwise mutually agreed, all Local Traffic exchanged between the Parties shall be transmitted on trunks solely dedicated to such Local Traffic. Neither Party may terminate intra-LATA or inter-LATA toll switched access traffic or originate toll-free traffic over dedicated Local Traffic trunks. N11 codes (including but not limited to, 411, 611, & 911) shall not be sent between the Parties' networks via Local Traffic trunk groups. Local Traffic exchange shall be provided via two-way trunks where technically and operationally feasible unless both Parties agree to implement one-way trunks.

The Parties will cooperatively develop joint forecasting for traffic utilization over Local Traffic trunk groups provided pursuant to this Agreement. Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as facilities and/or equipment becomes available. The Parties will make all reasonable efforts and cooperate in good faith to develop alternative solutions to accommodate orders when facilities are not available. Inter-company forecast information will be exchanged by the Parties upon reasonable request. The capacity of facilities provided by each Party will be based on mutual forecasts and sound engineering practice, as mutually agreed to by the Parties.

4.3. The Parties agree to exchange Local Traffic in a manner that is consistent with their respective duties to comply with applicable dialing parity requirements associated with such traffic.

5.0 COMPENSATION

5.1. Reciprocal Compensation is applicable for Transport and Termination of Local Traffic as defined in Section 1.13 and is related to the exchange of traffic described in Section 4. For the purposes of billing compensation for Local Traffic, billed minutes will be based upon records/reports provided by third parties or actual recorded usage. Measured usage begins when the terminating recording End Office Switch receives answer supervision from the called End User and ends when the terminating End Office Switch receives or sends disconnect (release message) supervision, whichever occurs first. The measured usage is aggregated at the end of the measurement cycle and rounded to a whole minute. Billing for Local Traffic shall be based on the aggregated measured terminating usage to SENTCO less traffic recorded as local that is Non-Local Traffic. Notwithstanding any provision to the contrary set forth herein, the Parties agree that Reciprocal Compensation for Transport and Termination of Local Traffic shall be determined on the basis of actual recorded usage. Further, and notwithstanding any provision to the contrary set forth herein, the Parties agree to exchange ISP Bound Traffic in accordance with Section 5.2.

5.2. The Parties agree to exchange ISP Bound Traffic in accordance with the Order on Remand by the FCC in CC Docket No. 96-98 on April 27, 2001. Specifically, SENTCO has not offered or adopted the FCC's rate caps as set forth in that Order; pursuant to paragraph 81 of that Order, SENTCO is required to pay intercarrier compensation for ISP Bound Traffic on a bill and keep basis. Further, the Parties acknowledge that because they did not exchange any ISP Bound Traffic pursuant to an interconnection agreement prior to the date of the above-referenced Order, all minutes of ISP Bound Traffic are to be exchanged on a bill and keep basis between the Parties in accordance with paragraph 81 of the Order, such that neither Party owes the other Party any compensation for the origination, transport or termination of such traffic.

5.3. The rate for Reciprocal Compensation shall be $0.024 per minute.

5.4. Non-Local Traffic shall be terminated to a Party subject to that Party's tariffed access charges. Each Party warrants and represents that it will not provision any of its services or exchange any traffic hereunder in a manner that permits the unlawful avoidance of the application of intrastate or interstate access charges by any other party including, but not limited to, third party carriers, aggregators and resellers. Each Party also agrees to take all reasonable steps to terminate any service to an End User that permits such End User to unlawfully avoid the application of access charges by the other Party. Telecommunications traffic to or from End Users that originates or terminates in areas other than the Local Service Area is subject to intrastate or interstate access charges regardless of whether the traffic may have been converted to Internet Protocol or any other transmission protocol during the routing and transmission of the call.

5.5. The following provisions shall apply to calculation of payments and billings:

5.5.1. SENTCO will compensate Sprint for Local Traffic delivered by SENTCO to Sprint for termination, as prescribed in Section 5.1, at the rate provided in

Section 5.3, above. Sprint will compensate SENTCO for Local Traffic delivered to SENTCO for termination to SENTCO's End Users as prescribed in Section 5.1 at the rate provided in Section 5.3. As applicable, the Parties will compensate each other for Non-Local Traffic at the rates provided in Section 5.4

5.5.2. Each Party shall prepare monthly billing statement(s) to the other Party, that will separately reflect the calculation of Reciprocal Compensation payable pursuant to Sections 5.1 and 5.3 and access charges pursuant to Section 5.4.

6.0 NOTICE OF CHANGES

If a Party contemplates a change in its network, which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party.

7.0 GENERAL RESPONSIBILITIES OF THE PARTIES

7.1. The Parties are each solely responsible for participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan. Each Party shall solely be responsible for its Communications Assistance for Law Enforcement Act ("CALEA") enforcement-related activity. Each Party shall also ensure that it takes all actions necessary for a full response to any CALEA and/or other law enforcement-related inquiry related in any manner to the originating/terminating traffic from an End User it serves and that such actions are completed in a timely manner. In the event that either Party fails to comply with any one or more of these obligations and an action is brought or costs imposed upon the other Party, the Party that failed to comply shall indemnify the other Party pursuant to the requirements of Section 11.0 of this Agreement. Neither Party shall use any service provided pursuant to this Agreement in any manner that prevents other persons from using or adversely impacts their Telecommunications Service, and subject to notice and a reasonable opportunity of the offending Party to cure any violation, either Party may discontinue or refuse service if the other Party violates this provision.

7.2. Both Parties agree to utilize SS7 Common Channel Signaling ("SS7") between their respective networks for the exchange of traffic addressed in this Agreement in order to track and monitor the traffic that is being exchanged at the POI. Both Parties shall provide SS7 connectivity in accordance with accepted industry practice and standard technical specifications, and shall exchange all originally-generated SS7 messages for call set-up, including without limitation, ISDN User Part ("ISUP") and Transaction Capability User Part ("TCAP") messages, and SS7-based features and functions between their respective networks, including CLASS features and functions.

7.3. Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of the Common Language Location Identifier ("CLLI") assigned to its switches.

7.4. 911/E911. Each Party is solely responsible for the receipt and transmission of 911/E911 traffic originated by End Users of its Telephone Exchange Service. The Parties acknowledge that calls to 911/E911 services shall not be routed over the interconnection

trunk group(s). To the extent that a Party incorrectly routes such traffic over such arrangements, that Party shall fully indemnify and hold harmless the other Party for any claims, including claims of third parties, related to such calls.

8.0 TERM AND TERMINATION

8.1. Subject to the provisions of Section 14, the initial term of this Agreement shall be for a one (1) year term (the "Initial Term"), which shall commence on the Effective Date, and thereafter shall continue on a month to month basis, unless terminated or modified pursuant to the terms and conditions of this Agreement.

8.2. Either Party may request this Agreement to be renegotiated at any time after the expiration of the Initial Term. The Party desiring renegotiation shall provide written notice to the other Party. Not later than thirty (30) days following receipt of such notice, the receiving Party will acknowledge receipt of the written notice and the Parties will commence negotiation, which shall be conducted in good faith, except in cases in which this Agreement has been terminated for default. Provided the Parties are pursuing negotiation or arbitration of a new Agreement, this Agreement will continue in full force and effect until such new Agreement is effective.

8.3. If, within one hundred and thirty-five (135) days following the date of written notice of desire to renegotiate referred to in the preceding section, the Parties are unable to negotiate new terms, conditions and prices for a new agreement between the Parties, either Party may petition the Commission to establish appropriate terms, conditions and prices for such new agreement pursuant to 47 U.S.C. § 252. Any pricing terms and conditions of the new agreement between the Parties arrived at through negotiation and/or arbitration shall be retroactively effective as of the date of the written request seeking renegotiation. Unless the Parties otherwise mutually agree, true-ups or adjustments arising from any new pricing terms and conditions shall be implemented as of the effective date of the new agreement described herein.

8.4. The Parties agree that disputed and undisputed amounts due under this Agreement shall be handled as follows:

8.4.1. If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall, within thirty (30) days of its receipt of the invoice containing such disputed amount, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The Parties will work together in good faith to resolve issues relating to the disputed amounts. If the dispute is resolved such that payment of the disputed amount is required, whether for the original full amount or for the settlement amount, the Non-Paying Party shall pay the full disputed or settlement amounts with interest at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under Nebraska's applicable law. In addition, the Billing

Party may initiate a complaint proceeding with the appropriate regulatory or judicial entity, if unpaid undisputed amounts become more than 90 days past due, provided the Billing Party gives an additional 30 days notice and opportunity to cure the default.

8.4.2. Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under Nebraska's applicable law.

8.4.3. Undisputed amounts shall be paid within thirty (30) days of receipt of invoice from the Billing Party.

8.5. Upon termination or expiration of this Agreement in accordance with this section:

(a) Each Party shall comply immediately with its obligations as set forth in Section 8.2 above;

(b) Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement;

(c) Each Party's indemnification obligations shall survive termination or expiration of this Agreement.

8.6. Either Party may terminate this Agreement in whole or in part in the event of a default of the other Party, provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and the defaulting Party does not implement mutually acceptable steps to remedy such alleged default within thirty (30) days after receipt of written notice thereof.

9.0 CANCELLATION CHARGES

Except as provided herein, no cancellation charges shall apply.

10.0 NON-SEVERABILITY

10.1. The services, arrangements, terms and conditions of this Agreement were mutually negotiated by the Parties as a total arrangement and are intended to be non-severable.

10.2. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of federal or state law, or any regulations or orders adopted pursuant to such law.

11.0 INDEMNIFICATION

11.1. Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against loss, cost, claim, liability, damage,

and expense (including reasonable attorney's fees) to End Users and other third parties for:

(a) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, its employees, agents or contractors;

(b) claims for libel, slander, or infringement of copyright arising from the material transmitted over the Indemnified Party's facilities arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's End Users; and

(c) claims for infringement of patents arising from combining the Indemnified Party's facilities or services with, or the using of the Indemnified Party's services or facilities in connection with, facilities of the Indemnifying Party.

Notwithstanding this indemnification provision or any other provision in the Agreement, neither Party, nor its parents, subsidiaries, affiliates, agents, servants, or employees, shall be liable to the other for Consequential Damages (as defined in Section 12.3).

11.2. The Indemnified Party will notify the Indemnifying Party promptly in writing of any claims, lawsuits, or demands by End Users or other third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this section, and, if requested by the Indemnifying Party, will tender the defense of such claim, lawsuit or demand in the event:

(a) The Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party may proceed to defend or settle said action and the Indemnifying Party shall hold harmless the Indemnified Party from any loss, cost liability, damage and expense.

(b) The Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand.

11.3. The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

11.4. Neither Party shall accept the terms of a settlement that involves or references the other Party in any matter without the other Party's approval.

12.0 LIMITATION OF LIABILITY

12.1. No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or

facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

12.2. Except as otherwise provided in Section 11.0, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct of the first Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

12.3. Except as otherwise provided in Section 11.0, no Party shall have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages.

13.0 DISCLAIMER

EXCEPT AS OTHERWISE PROVIDED HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER. ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD-PARTY.

14.0 REGULATORY APPROVAL

The Parties understand and agree that this Agreement will be filed with the Commission. Each Party covenants and agrees to fully support approval of this Agreement by the Commission. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

15.0 PENDING JUDICIAL APPEALS AND REGULATORY RECONSIDERATION

The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date ("Applicable Rules"). In the event of any amendment to the Act, any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Act to the Parties or in which the FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually and collectively, Amended Rules), either Party may, by providing written notice to the other Party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement.

16.0 MOST FAVORED NATION PROVISION

Nothing in this Agreement shall alter or affect the rights of either Party pursuant to Section 252(i) of the Act.

17.0 MISCELLANEOUS

17.1. Authorization.

17.1.1. SENTCO is a corporation duly organized, validly existing and in good standing under the laws of the State of Nebraska and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

17.1.2. Sprint Communications, L.P. is a limited partnership duly organized, validly existing and in good standing under the laws of the state of Delaware, authorized to do business in the state of Nebraska and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

17.2. Compliance. Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

17.3. Independent Contractors. Neither this Agreement, nor any actions taken by Sprint or SENTCO in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between Sprint and SENTCO, or any relationship other than that of purchaser and seller of services. Neither this Agreement, nor any actions taken by Sprint or SENTCO in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between Sprint and SENTCO end users or others.

17.4. Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected (collectively, a "Force Majeure Event"). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the force majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

17.5. Record Retention. During the Initial Term and any extended period that this Agreement is in effect, and within forty-five (45) days of a written request from either Party (the "Requesting Party"), the other Party (the "Providing Party") shall provide one complete month of all the call records associated with the traffic subject to Section 5.1, 5.2 and 5.4 (the "Test Month") that the Providing Party delivers to the Requesting Party through the Point of Interconnection ("POI") established under the Agreement; provided, however, that the Test Month selected shall not be older than 12 months from the date of the request. The call records shall conform to the then prevailing industry standard record format (or such other standard industry format as established from time to time). The first request in a given year of a Requesting Party for the call records of the Providing Party shall be provided to the Requesting Party at no charge. Any reasonable costs associated directly with additional requests in that same year for call records shall be borne by the Requesting Party, provided, however, that the Requesting Party is not required to pay such costs if it demonstrates that at least 30% of the traffic associated with those records falls outside of Section 5.1 of this Agreement. Each Party shall reasonably cooperate with the other in any investigation under this Section.

17.6. Confidentiality.

17.6.1. Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (1) shall be held in

confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 17.6.2 of this Agreement.

17.6.2. If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief, which such Disclosing Party chooses to obtain.

17.6.3. In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

17.7. Governing Law. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with the Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of Nebraska without reference to conflict of law provisions.

The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be adopted by any federal, state, or local government authority. Any modifications to this Agreement occasioned by such change shall be effected through good faith negotiations.

17.8. Taxes. Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing

Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide such sale for resale tax exemption certificate will result in no exemption being available to the purchasing Party.

17.9. Assignment. This Agreement shall be binding upon the Parties and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. Each Party covenants that, if it sells or otherwise transfers to a third party, unless the Party which is not the subject of the sale or transfer reasonably determines that the legal structure of the transfer vitiates any such need, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

17.10. Non-Waiver. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

17.11. Notices.

17.11.1. Notices given by one Party to the other Party under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) delivered by express delivery service; (iii) mailed, certified mail, return receipt requested to the following addresses of the Parties:

Sprint:
Sprint Communications, L.P.
6450 Sprint Parkway
Overland Park, Kansas 66251
Attn: Director, Wholesale and
Interconnection Management
Phone Number: 913-315-9081

SENTCO:
Southeast Nebraska Telephone Co.
110 West 17th Street
Falls City, NE 68355
Attn: Elizabeth A Sickel, VP/Gen. Mgr
Phone Number: 402-245-4451
Fax Number: 402-245-4770

With a copy to:
Paul M. Schudel
Woods & Aitken, LLP

301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
Phone Number: 402-437-8500
Fax Number: 402-437-8558

Or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of: (i) the date of actual receipt; (ii) the next business day when notice is sent via express mail or personal delivery; (iii) three (3) days after mailing in the case of certified U.S. mail.

17.11.2. In order to facilitate trouble reporting and to coordinate the repair of Interconnection Facilities, trunks, and other interconnection arrangements provided by the Parties under this Agreement, each Party has established contact(s) available 24 hours per day, seven days per week, at telephone numbers to be provided by the Parties. Each Party shall call the other at these respective telephone numbers to report trouble with connection facilities, trunks, and other interconnection arrangements, to inquire as to the status of trouble ticket numbers in progress, and to escalate trouble resolution.

24-Hour Network Management Contact:

For SENTCO:
NOC/Repair Contact Number: 402-245-4451 (Mon.-Fri. 8-5);
After Hours: 402-245-4905 or 402-245-2728 or 402-245-4577
Facsimile Number: 402-245-4770

For Sprint:
NOC/Repair Contact Number: 1-888-862-8293

Before either Party reports a trouble condition, it must first use its reasonable efforts to isolate the trouble to the other Party's facilities, service, and arrangements. Each Party will advise the other of any critical nature of the inoperative facilities, service, and arrangements and any need for expedited clearance of trouble. In cases where a Party has indicated the essential or critical need for restoration of the facilities, services or arrangements, the other Party shall use its best efforts to expedite the clearance of trouble.

17.12. Publicity and Use of Trademarks or Service Marks. Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

17.13. Joint Work Product. This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

17.14. No Third Party Beneficiaries; Disclaimer of Agency. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party; nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other Party, unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

17.15. No License. No license under patents, copyrights, or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party, or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

17.16. Technology Upgrades. Nothing in this Agreement shall limit either Parties' ability to upgrade its network through the incorporation of new equipment, new software or otherwise, provided it is to industry standards, and that the Party initiating the update shall provide the other Party written notice at least ninety (90) days prior to the incorporation of any such upgrade in its network which will materially impact the other Party's service. Each Party shall be solely responsible for the cost and effort of accommodating such changes in its own network.

17.17. Entire Agreement. The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein are hereby incorporated into this Agreement by reference as if set forth fully herein, and constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified by a writing signed by an officer of each Party.

18.0 DISPUTE RESOLUTION

Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the State Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

18.1. Informal Resolution of Disputes. At the written request of a Party, each Party will

appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and my, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

18.2. Formal Dispute Resolution. If negotiations pursuant to Section 18.1 fail to produce an agreeable resolution within ninety (90) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration. In the case of an arbitration, each Party shall bear its own costs. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.

18.3. Continuous Service. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their payment obligations (including making payments in accordance with Section 4, 5, and 6) in accordance with this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates listed below.

Sprint Communications, L.P.

By: W. Richard Morris

Name: W. Richard Morris

Title: Vice President External Affairs

Date: October 6, 2005

Southeast Nebraska Telephone Company

By: Elizabeth A. Sickel

Name: Elizabeth A. Sickel

Title: Vice President

Date: September 23, 2005

1481

(Continued from page 8)

SIGN-IN: **Irrespective of the order in which listed, each case is subject to call for argument at 9:00 a.m. on the scheduled day. Accordingly, attorneys and pro se parties appearing for argument must sign in at the U.S. Court of Appeals Courtroom before 8:45 a.m.**

* * * Special time limits previously established.

RECORDS: The transcript and bill of exceptions must be returned to the Clerk of the Court of Appeals no later than November 7, 2005, unless requested sooner by the Clerk.

Lincoln, October 14, 2005. LANET S. ASMUSSEN

Back-up Docket

In order to ensure that the Court hears a full calendar of argued cases during each argument session and is not left short of cases for argument by virtue of settlements or dismissals after the Call has been printed, the Court has established the following cases as "back-up cases." These cases are subject to being called for oral argument upon short notice in order to ensure a full argument calendar, but such cases will not be called after 4:00 p.m. on November 9, 2005. If called, a case will be heard in accordance with its placement on the back-up docket which appears hereafter. Counsel should attempt to maintain availability. If not called, these cases may be placed on the January Proposed Call of the Court of Appeals.

Kearney

Kearney Back-up Docket cases not scheduled for oral argument will return to the cases ready list to be called in chronological order at a later date.

NOVEMBER 15, at 1:00 p.m. or November 16 or 17, 2005, at 9:00 a.m.

A-04-1053	Garcia v. Garcia	Red Willow
A-04-1171	Norby v. The Farnam Bank	Dawson
A-04-1219	Lenhart v. Department of Motor Vehicles	Perkins
A-04-1383	Brown v. Brown	Buffalo

Omaha

NOVEMBER 15, at 1:00 p.m. or November 16 or 17, 2005, at 9:00 a.m.

A-04-0147	Acton v. Acton	Douglas
A-04-1027	Otto-Briggs v. Lone Star Steakhouse & Saloon of Nebraska, Inc.	Douglas
A-04-1134	McKenzie v. The City of Omaha	Douglas

Nebraska Court of Appeals Proposed Call

Lincoln

The following cases may be scheduled for argument before the Nebraska Court of Appeals at 1:00 p.m. on December 13, or 9:00 a.m. on December 14 or 15, 2005, in the Court of Appeals Courtroom, State Capitol Building, Lincoln, Nebraska. Check the Proposed Call for your case and mark your calendar. Please notify the Clerk's Office in writing by October 28, 2005, if you have a conflict on a date. NOTE: **This deadline date will be strictly enforced.** If you can't argue at any time during the session, ask the Court to continue the case by stipulation or by motion and proof of service. You must show cause for the continuance.

AFTER THE CASES HAVE BEEN SCHEDULED ON THE CALL, CASES WILL NOT BE CONTINUED EXCEPT UPON A SHOWING OF URGENT NECESSITY.

Gen. No.		County
CRIMINAL CASES		
A-05-0350	State v. Charko	Lancaster
A-05-0657	State v. Groene	Platte

ADVANCED CIVIL CASES (all will be heard unless otherwise ordered)

STATE OF NEBRASKA
NEW PUBLIC NOTICES
NEBRASKA
PUBLIC SERVICE COMMISSION
300 The Atrium, 1200 N Street, P.O. Box 94927
Lincoln, Nebraska 68509

The following application(s) may be inspected at the office of the Nebraska Public Service Commission during regular office hours. Interventions must be filed with the Commission in the manner and within the time prescribed in Section 14 of the Rules of Commission Procedure, Title 291, NAC Chapter 1.

C-3429 Sprint Communications Company L.P. (Sprint), Overland, Kansas, petition for arbitration under the Telecommunications Act, of certain issues associated with the proposed interconnection agreement between Sprint and Southeast Nebraska Telephone Company. Comments on the filed interconnection agreement must be filed by **November 8, 2005.**

C-3497 In the Matter of the Application of Alltel Communications of Nebraska, Inc., Little Rock, Arkansas, seeking designation as an Eligible Telecommunications Carrier Pursuant to Section 214 (e) (2) of the Communications Act of 1934.

NOTICE

The Nebraska Public Service Commission will hold a public meeting on **Tuesday, November 1, 2005,** at 10:00 a.m. in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska. The agenda will be available for public inspection no later than 10:00 a.m. on the day before the meeting.

If auxiliary aids or reasonable accommodations are needed for attendance at a Commission meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Commission at (402) 471-0213 (TDD) or the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven days is needed when requesting an interpreter.

10-25-05 protest ends 11/28/05

New Public Notices

Sheriff's Sales

CROKER, HUCK, KASHER, DeWITT, ANDERSON & GONDERINGER, L.L.C.
Attorneys
2120 South 72nd Street
Suite 1200
NOTICE OF SHERIFF'S SALE
Douglas County, Nebraska

By virtue of an Order issued out of the District Court of Douglas County, Nebraska, upon a judgment rendered in the District Court of Douglas County, Nebraska, within and for Douglas County in favor of HGR Acquisitions, L.L.C., Plaintiff and against Terry L. Dewall and Dewall Enterprises, Inc. in Doc. 1043 No. 493, the Sheriff of Douglas County is ordered to sell the following described property to-wit:

The interest of Terry L. Dewall and Dewall Enterprises, Inc.

1. U.S. Patent number 5,007,412 for a back support vest issued [illegible]

Trustee's Sales

LOCHER, CELLILLI, PAVELKA & DOSTAL, L.L.C.
Attorneys
200 The Omaha Club
2002 Douglas Street
NOTICE OF TRUSTEE'S SALE

TO WHOM IT MAY CONCERN:

You are hereby notified that the following-described property will be sold by Gregory L. Galles, Successor Trustee, at public auction to the highest bidder outside the Jury Room at the Douglas County Courthouse, 1701 Farnam Street, Omaha, Douglas County, Nebraska, on **December 5, 2005,** at 9:00 o'clock a.m.:

Lot 4, Deer Creek, a Subdivision in Douglas County, Nebraska.

The highest bidder will deposit with the Trustee, on the day and time of the sale, ten percent (10%) of the opening bid in cash or

FULLENKAMP, DOYLE & JOBEUN
Attorneys
11440 West Center Road
NOTICE OF INCORPORATION OF CENTRIFUGE, INC.

Notice is hereby given that Centrifuge, Inc. is incorporated under the laws of the State of Nebraska with its registered office located at 15528 Burt Street, Omaha, Nebraska 68154. The name of its initial registered agent is Todd Eby, 15528 Burt Street, Omaha, Nebraska 68154. The Incorporator is Larry A. Jobeun, 11440 West Center Road, Suite C, Omaha, Nebraska 68144. The aggregate number of shares which the corporation shall have the authority to issue is 10,000 shares of common stock having a par value of $1.00 per share, which stock, when issued, shall be fully paid for in money, property or services rendered to the corporation at its reasonable and fair value, to be determined by the Board of Directors. The time of commencement of the corporation was October 17, 2005.

LARRY A. JOBEUN,
Incorporator

t10-25-3t

FULLENKAMP, DOYLE & JOBEUN
Attorneys
11440 West Center Road
NOTICE OF INCORPORATION OF NEW CREATION DESIGN, INC.

Notice is hereby given that New Creation Design, Inc. is incorporated under the laws of the State of Nebraska with its registered office located at 15528 Burt Street, Omaha, Nebraska 68154. The name of its initial registered agent is Todd Eby, 15528 Burt Street, Omaha, Nebraska 68154. The Incorporator is Larry A. Jobeun, 11440 West Center Road, Suite C, Omaha, Nebraska 68144. The aggregate number of shares which the corporation shall have the authority to issue is 10,000 shares of common stock having a par value of $1.00 per share, which stock, when issued, shall be fully paid for in money, property or services rendered to the corporation at its reasonable and fair value, to be determined by the Board of Directors. The time of commencement of the corporation was October 17, 2005.

LARRY A. JOBEUN,
Incorporator

t10-25-3t

FULLENKAMP, DOYLE & JOBEUN
Attorneys
11440 West Center Road
NOTICE OF DISSOLUTION OF VAL VERDE, L.L.C.

Notice is hereby given that Val Verde, L.L.C., a Nebraska limited liability company has filed a Statement of Intent to Dissolve and Articles of Dissolution with the Nebraska Secretary of State and the company is in the process of voluntary dissolution. The terms and conditions of such dissolution are, in general that all debts and obligations of the company are to be fully paid and satisfied or

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN RE:	
SPRINT COMMUNICATIONS COMPANY L.P.'S PETITION FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT.	**APPLICATION NO: C-3429**

POST-DECISION STATEMENT OF SPRINT COMMUNICATIONS COMPANY L.P. CONCERNING INTERCONNECTION AGREEMENT TO BE APPROVED PURSUANT TO COMMISSION'S SEPTEMBER 13, 2005 ORDER

On September 13, 2005, the Commission entered Findings and Conclusions (the "September 13, 2005 Order") that resolved the disputed issues raised in the Petition for Arbitration dated May 20, 2005 (the "Petition") of Sprint Communications Company L.P. ("Sprint") and in the response thereto of Southeast Nebraska Telephone Company ("SENTCO"). The Commission further ordered that the parties file an interconnection agreement containing the terms and conditions consistent with the findings set forth in the September 13, 2005 Order.

Under the Commission's procedures, as stated in its arbitration policy, Sprint and SENTCO have the right to file comments on the filed interconnection agreement and may request an oral hearing regarding the proposed interconnection agreement prior to its formal approval by the Commission. However, Sprint recognizes that any further comments or oral hearing would largely repeat the positions that it previously has asserted and which the Commission decided in its September 13, 2005 Order. At the same time, however, Sprint wishes to fully preserve its rights to appeal the Commission's September 13, 2005 Order and the final interconnection agreement approved by the Commission pursuant to that Order.

To accommodate Sprint's desire to fully preserve its appeal rights and its desire

(undoubtedly shared by the Commission) to avoid redundant proceedings, Sprint states:

1. Sprint is prepared to waive any rights it has to submit further comments and appear at an oral hearing on the interconnection agreement submitted to the Commission pursuant to the September 13, 2005 Order. Sprint's waiver is based on its understanding from communications with SENTCO's counsel that SENTCO is likewise prepared to waive further comments and oral hearing. Should SENTCO instead choose to submit comments or demand a oral hearing, Sprint reserves the right to submit responsive comments and/or appear at any hearing.

2. Nothing in this conditional waiver shall be deemed a waiver of Sprint's right to appeal the September 13, 2005 Order or the Commission's ultimate order approving an interconnection agreement in this proceeding.

3. Sprint requests that the Commission provide in its ultimate order approving an interconnection agreement that the order is deemed to incorporate its September 13, 2005 Order resolving the disputed issues in this proceedings.

DATED this 1st day of November, 2005.

REED SMITH, LLP

By: _____
Raymond A. Cardozo

Two Embarcadero Center, Suite 2000
San Francisco, CA 94111
(415) 543-8700
(415) 391-8269

Attorneys for SPRINT COMMUNICATIONS COMPANY

And

1484

SPRINT COMMUNICATIONS COMPANY L.P.
Diane C. Browning
Attorney – Law and External Affairs
6450 Sprint Parkway
KSOPHN0212-2A511
Overland Park, KS 66251
913-315-9284
913-523-0571 (fax)

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing POST-DECISION STATEMENT OF SPRINT COMMUNICATIONS COMPANY L.P. CONCERNING INTERCONNECTION AGREEMENT TO BE APPROVED PURSUANT TO COMMISSION'S SEPTEMBER 13, 2005 ORDER were sent by FedEx Overnight Courier and electronic mail on November 1, 2005, to the following:

Paul M. Schudel
James A. Overcash
Woods & Aitken LLP
301 South 13th Street, Suite 500
Lincoln, NB 68508
Tel: (402) 437-8500
pschudel@woodsaitken.com

Shana Knutson
Nebraska Public Service Commission
300 The Atrium
1200 N Street
Lincoln, NE 68508
(402) 471-3101
shana.knutson@psc.ne.gov

Thomas J. Moorman
Kraskin, Moorman & Cosson, LLC
2120 L Street, N.W., Suite 520
Washington, DC 20037
Tel: (202) 296-8890

Raymond A. Cardozo

1486

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN RE:	)	
	)	
SPRINT COMMUNICATIONS COMPANY L.P.'S PETITION FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT.	)	**APPLICATION NO: C-3429**
	)	
	)	
	)	

STATEMENT OF SOUTHEAST NEBRASKA TELEPHONE COMPANY CONCERNING INTERCONNECTION AGREEMENT TO BE APPROVED PURSUANT TO COMMISSION'S SEPTEMBER 13, 2005 ORDER

On September 13, 2005, the Commission entered Findings and Conclusions (the "September 13, 2005 Order") that resolved the disputed issues raised in the Petition for Arbitration (the "Petition") dated May 20, 2005 of Sprint Communications Company L.P. ("Sprint"), and in the response of Southeast Nebraska Telephone Company ("SENTCO") thereto. The Commission ordered that the parties file an interconnection agreement containing terms and conditions consistent with the findings set forth in the September 13, 2005 Order, and the parties complied with such Order by the filing of an Interconnection and Reciprocal Compensation Agreement with the Commission on October 11, 2005 (the "Interconnection Agreement").

Pursuant to paragraphs 12 and 13 of the Commission's Arbitration Policy, SENTCO has the right to file comments on the Interconnection Agreement and may request an oral hearing regarding such Agreement prior to its formal approval by the Commission. To avoid unnecessary pleadings and the expenditure of Commission resources, SENTCO believes that providing any further comments or participating at an oral hearing in that regard would largely repeat the positions that SENTCO previously has asserted and on which the Commission

properly decided in its September 13, 2005 Order. Based upon the contents of a Post-Decision Statement filed by Sprint and dated November 1, 2005, it is SENTCO's understanding that Sprint agrees that the Commission proceeding directly to action on the Interconnection Agreement is appropriate.

Accordingly, and without waiving any rights in any subsequent appeal of this docket, but confirming its desire to avoid redundant proceedings before the Commission, based upon the foregoing facts, SENTCO states as follows:

1. SENTCO will not assert any rights it has to submit further comments and to participate at an oral hearing on the Interconnection Agreement.

2. Nothing in this Statement shall be deemed a waiver of SENTCO's rights in connection with any appeal or other judicial proceeding initiated with regard to the September 13, 2005 Order or the Commission's ultimate order approving the Interconnection Agreement.

DATED this the 2nd day of November, 2005.

SOUTHEAST NEBRASKA TELEPHONE COMPANY

By: Paul M. Schudel

Paul M. Schudel, #13723
James A. Overcash, #18627
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
(402) 437-8500

and

Thomas J. Moorman, D.C. Bar No. 384790
KRASKIN, MOORMAN & COSSON, LLC
2120 L Street, N.W., Suite 520
Washington, D.C. 20037
(202) 296-8890

Its Attorneys

1488

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing **STATEMENT** were sent by First-Class U.S. Mail and electronic mail on November 2, 2005, to the following:

Diane C. Browning
6450 Sprint Parkway,
Mailstop KSOPHN0212-2A511
Overland Park, KS 66251

Raymond A. Cardozo
Reed Smith, LLP
Two Embarcadero Center, Suite 2000
San Francisco, CA 94111

Shana Knutson
Nebraska Public Service Commission
300 The Atrium
1200 N Street
Lincoln, NE 68508

Paul M. Schudel

1489

Nebraska Public Service Commission

300 The Atrium, 1200 N Street, Lincoln, NE 68508
Post Office Box 94927, Lincoln, NE 68509-4927
Website: www.psc.state.ne.us
Phone: (402) 471-3101
Fax: (402) 471-0254

NEBRASKA CONSUMER HOTLINE:
1-800-526-0017

November 22, 2005

CERTIFICATION

To Whom It May Concern:

I, Andy S. Pollock, Executive Director of the Nebraska Public Service Commission, hereby certify that the enclosed is a true and correct copy of the original order made and entered in C-3429 on the 22nd day of November 2005. The original order is filed and recorded in the official records of the Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Nebraska Public Service Commission, Lincoln, Nebraska, this 22nd day of November 2005.

Sincerely,

Andy S. Pollock
Executive Director

ASP:dk

Enclosure

cc: Diane C. Browning, 6450 Sprint Parkway, Mailstop KSOPHN0212-2A511, Overland Park, KS 66251
Bradford E. Kistler, Kinsey Ridenouer Becker & Kistler, LLP, 601 Lincoln Square, 121 S. 13th St., Lincoln, NE 68501
Elizabeth A. Sickel, Southeast Nebraska Telephone Co., 110 W. 17th St., Falls City, NE 68355
Paul M. Schudel, Woods & Aiken, LLP, 301 S. 13th St., Ste. 500, Lincoln, NE 68508
James Overcash, #18627, Woods & Aitken, LLP, 301 South 13th Street, Suite 500, Lincoln, NE 68508
Thomas J. Moorman, DC Bar No., 384790, KRASKIN, MOORMAN & COSSON, LLC, 2120 L Street, NW 520, Washington, DC 20037
REED SMITH LLP, Darren S. Weingard, Two Embarcadero Center, Ste. 2000, San Francisco, CA 94111
REED SMITH LLP, Raymond A. Cardozo, Two Embarcadero Center, Ste. 2000, San Francisco, CA 94111

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Sprint Communications Company L.P., Overland Park, Kansas, Petition for arbitration under the Telecommunications Act, of certain issues associated with the proposed interconnection agreement between Sprint and Southeast Nebraska Telephone Company, Falls City.	)	Application No. C-3429 APPROVED Entered: November 22, 2005

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

On September 13, 2005, the Nebraska Public Service Commission (Commission) entered an order making its findings and conclusions with respect to the petition for arbitration filed by Sprint Communications Company L.P., Overland Park, Kansas against Southeast Nebraska Telephone Company (SENTCO), Falls City. In that order, the Commission directed the parties to file an interconnection agreement in conformity with the Commission's findings and conclusions. On October 11, 2005, SENTCO submitted the interconnection agreement signed by SENTCO and Sprint.

Upon review of the proposed conforming interconnection agreement, the Commission is of the opinion and finds that the arbitrated interconnection agreement signed by the parties and filed by SENTCO on October 11, 2005, should be approved.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the interconnection agreement signed by the parties and filed by SENTCO on October 11, 2005, shall be and it is hereby approved.

IT IS FURTHER ORDERED that the executed agreement filed on October 11, 2005, shall be the official copy on record with the Commission.

MADE AND ENTERED at Lincoln, Nebraska this 22nd day of November, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

//s// Frank E. Landis
//s// Gerald L. Vap

ATTEST:

Executive Director